
Ministry of the Attorney General



# PROVINCIAL OFFENCES PROCEDURE

## AN ANALYSIS AND EXPLANATION OF LEGISLATIVE PROPOSALS

APRIL, 1978

# PROVINCIAL OFFENCES PROCEDURE

## AN ANALYSIS AND EXPLANATION OF LEGISLATIVE PROPOSALS:

## The Provincial Offences Act, 1978
## and
## The Provincial Courts Amendment Act, 1978

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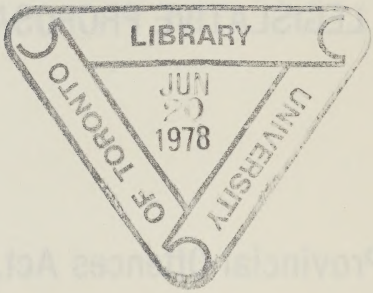
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# TABLE OF CONTENTS

# Statement by the Honourable R. Roy McMurtry, Q.C., Attorney General for the Province of Ontario

Many persons living in Ontario find the procedure which now governs the prosecution of provincial offences bewildering, expensive, time consuming and altogether disproportionate in gravity to those offences. This situation is redressed by the proposed Provincial Offences Act, which creates a clear, self-contained procedural code to simplify procedures, eliminate technicalities, enhance procedural rights and protections, and remove the obstacle of delay from the assertion of rights and the conclusion of prosecutions. In addition, the Act promotes the replacement of jailing persons who do not pay their fines with effective means for collecting those fines.

The proposed Provincial Offences Act attacks directly the root of the present procedural problem, which springs from the fact that provincial offences are now being prosecuted under a code of procedure adopted by reference to the Criminal Code of Canada. Although the adopted procedure is the less rigid and formal of the two systems established in the Criminal Code, it is still steeped in centuries of assumptions about crimes and the persons who commit them. Neither these assumptions nor the rigid technicalities they have engendered are appropriate for the 90% of provincial offences which are intended to regulate activities which are not only legal but also useful to society.

Under the Provincial Offences Act, the recipient of a parking ticket will no longer be involved in courts and procedures designed and intended for criminal prosecutions. However, since there are some very grave provincial offences, carrying penalties which include substantial fines and jail terms, the Act establishes for these offences a separate set of procedures, akin to, but nonetheless significantly less rigid than those adopted at present from the Criminal Code. Throughout the Act, whether dealing with the procedure for minor offences or that for the more serious ones, the objective in replacing the existing law is to remove disproportionate complexities and technicalities.

Although many of these were originally written into the Criminal Code to enhance the protection of accused persons, their uncritical transfer to provincial offence procedure has not accomplished that end. Pressures of volume plus the core fact that provincial offences are not criminal in nature have so distorted the adopted criminal procedures that they simply clog the system and delay individual cases without ensuring procedural fairness. The principal challenge in the creation of this new code of procedure has been to strip out the excess procedural baggage while preserving and enhancing the procedural rights of accused persons.

An example of the approach which has been taken is found in the ways in which the Act enhances the average defendant's ability to respond to a charge of a minor offence. At present, a person served with a summary conviction ticket may pay a pre-set fine out of court, or arrange to attend or be represented in court to defend or explain, or take no action, in which case a trial will be held in his or her absence, without consideration being given to possible substantive defences. A person who wishes to appear to defend a charge is often confronted with adjournments which may require him or her to miss work on a number of occasions. As well, a person who simply wishes to admit guilt but offer an explanation in mitigation of the penalty or seek time to pay a fine must generally miss work to do so.

Under the new procedure, the present rights to a full trial or to pay a pre-set fine without attending court continue to exist, but in addition:

(i) defendants will be able to drop in at the court office at their convenience, without prior arrangement, to plead guilty before a justice and seek time to pay the fine or offer an explanation in mitigation of the set penalty, which the justice could reduce;

(ii) defendants who wish to put forward a legal defence but do not wish to appear or be represented at a trial will be able to deliver to the court a written defence. This will be reviewed by a justice; if it discloses any legal ground of defence a trial will be held without the defendant having to appear. At this trial the court will consider the case against the defendant in light of the written explanation, perhaps questioning the Crown's witnesses to clear up points raised in the written submission. Thus, the defendant will have his defence raised without having to attend or be represented, provided, however, that a conviction could be entered without a trial being held if the written explanation did not raise a reasonable defence to the charge.

(iii) defendants who wish to appear or be represented at a trial will have an absolute right to do so. They will be obliged to tell the court office that a trial should be scheduled; in return their trial will often be scheduled for a fixed time of day. With both sides being aware in advance of the fixed trial date and time, adjournments should rarely be necessary. Thus, instead of having to arrive at 10:00 a.m. for a case which might not start until 11;30 or indeed the afternoon, or which might be adjourned to another day, the defendant can be given a more precisely fixed time for his or her trial. Once a person has pleaded not guilty and elected to appear at his trial, a trial of the issues will be held even if he or she does not appear.

Further details of these procedures will be discussed later in this booklet, but the outline given shows the great extent to which present rigidities and resulting inconveniences are ameliorated.

The present system, having been adopted from criminal procedure, simply cannot countenance concepts such as walk-in guilty pleas, or written defences. It demands either the presence of the defendant in court for a trial (even if the "trial" consists of a guilty plea and a one minute explanation), or a formal "trial" without the defendant and without his or her side of the story being considered.

The new Act not only brings flexibility to a defendant's options, but it also greatly reduces the present enormous costs of holding criminal-style trials in all cases in which the defendant has not mailed in his fine. Few people realize that the real administrative and workload burden on our justice system comes not from complex criminal trials, but rather from the ever-increasing flood of minor offences which is threatening to engulf the administration of justice in this province.

The problem is volume. While in one year the Ontario courts receive about a quarter of a million criminal offences, they are hit with more than three and one half million provincial offence charges. Because the basic structure of the current provincial offence procedure is the same as the criminal procedure employed in a murder trial, and because the paperwork burden is similar, minor offences are being tried in a manner which clogs the courts. This inevitably leads to multiplying adjournments and delay for defendants, together with ever-mounting costs for both defendants and the taxpayers of this Province.

> In 1972 the Ontario Law Reform Commission commented that:
> "the whole system of administration of Provincial offences is collapsing not only in Court but also with respect to the service of summonses, execution of warrants and the vast amount of related paperwork."

The new Act reduces the paperwork and administrative burden on the court by not requiring trials to be scheduled and held where the defendant does not wish to dispute the charge. Savings in police time will amount to millions of dollars annually, since police officers will only have to attend court when a not-guilty plea is to be entered. Further savings in police time will come about when the police no longer have to process and attempt to execute the thousands of warrants of committal now issued each the year for the incarceration of persons whose fines are in default. This police saving from the Act's reduction of the use of imprisonment for non-payment of fines is complimented by savings made by the corrections system, which will no longer have to process defaulting defendants. And of course, the use of effective means to enforce fine payment means that revenue increases at the same time as the expenses of incarceration decrease.

In this complete re-thinking and restructuring of provincial offence procedure, the Act builds upon a foundation of earlier important, but much less comprehensive reforms. Among the first of these were provisions permitting defendants to be served by mail rather than by a police officer arriving at their door. More recently, the province implemented the Uniform Traffic Ticket which enabled a motorist to be served at the scene of an offence with a ticket setting out the offence charged instead of having to wait weeks for service of a summons. This ensured that the average citizen would know of the conduct which gave rise to the charge against him or her.

Because of the success of this latter innovation, it was extended in 1972, by means of the Summary Conviction Ticket, to the full range of provincial offences. As well as saving police and clerical manpower by cutting through the normal mass of paperwork generated by any minor charge, this procedure enabled many persons charged under provincial laws to plead guilty out of court by signing a guilty plea and sending in to the court a predetermined penalty shown on the ticket.

Another major step was taken in 1972 when The Highway Traffic Act was amended to provide for the suspension of a driver's licence, instead of the imposition of a jail term, when a driver failed to pay a traffic fine. Formerly an unpaid traffic fine resulted, in most cases, in a warrant of committal to jail for non-payment of the fine. The 1972 amendment, which came into force on April 2, 1973, permitted the court, instead of issuing a warrant of committal, to order the suspension of the driver's licence of a driver who had not paid his or her fine within the time allowed by the court.

Although this change sounds simple, it represented a profound change in approach. It was a major step away from the traditional approach of the criminal law, which backs up its sanction of a fine with a threat of imprisonment. This heavy-handed approach was employed for all offences under the criminal law, no matter how minor. And this sanction found its way into Ontario's treatment of provincial offenders, regardless of the nature or gravity of the offence. Reinforcement and extension of the 1972 change is promoted by this Act.

Further ameliorations of criminal procedure have been tested at the North York Traffic Tribunal, an immensely successful pilot project now being considered for expansion into other areas. At this tribunal, which hears all trials for traffic offences in the Borough of North York in Metropolitan Toronto, traffic offence trials are heard apart from trials of criminal offences, thus permitting a much less formal approach. The concept of permitting an offender to make an unscheduled appearance, at a time convenient to him or her, to offer a plea of guilty with an explanation was pioneered, together with changes in the format of trials where not guilty pleas are entered. Public response to the Tribunal has been overwhelmingly laudatory; hundreds of motorists have written to praise

the simplicity and informality of the Tribunal. The new Act draws heavily upon the Tribunal's success with simplification and deformalization of the entire process and creation of the drop-in guilty plea.

Although the Act builds upon prior successful innovations, and is the result of an intensive effort to design a complete code of procedure which is compatible with the nature of provincial offences, errors and omissions will no doubt be found. As well, certain of the proposed changes from criminal procedure involve concepts about which reasonable persons can fairly differ. For these reasons, the Act, together with the ancillary Provincial Courts Amendment Act, is being made available to the public in this explanatory package in the hope that comments and suggestions for improvements will be made. Because there is an obvious need to pass this legislation as soon as it is reasonably practicable to do so, it is hoped that persons interested in the development of the legislation will respond as soon as possible. All responses should be directed to:

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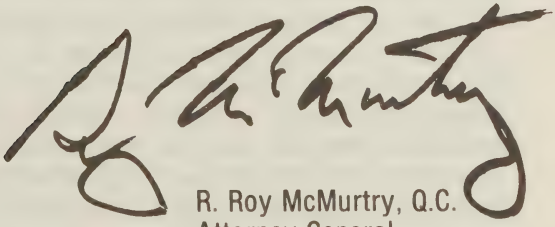


R. Roy McMurtry, Q.C.
Attorney General

# PART I

## AN ANALYSIS OF THE PROVINCIAL OFFENCES ACT, 1978

### A. Principal Features

The Provincial Offences Act creates a new procedural framework stressing convenience, clarity, efficiency and simplicity. It is designed to place less emphasis upon formal court appearances, technical and adversarial procedures, and the ceremonial trappings and acts which needlessly permeate the existing process. While part B of this analysis will survey each section of the Act individually, this section will outline in broad terms the principal features of the Act.

### 1. Classification

Fundamental to the approach taken in the Act is the realization that provincial offences are not homogeneous, ranging as they do from minor traffic offences to offences carrying penalties as great as five years imprisonment. Of those offences brought to court, approximately 90% are truly minor, regulatory offences for which the penalty imposed is a fine of less than two hundred and fifty dollars.

The Act seeks to isolate these cases, which do not require the strictures of criminal procedure, from the remaining 10% of the volume, which includes for example, environmental protection offences, serious construction safety violations, security trading offences, consumer protection offences, and the more serious driving offences such as careless driving and the upper range of the speeding offences. The types of issues raised in prosecutions of this nature and the gravity of the offences and their consequences, do require a more formal, detailed procedural framework.

In distinguishing these two groups of offences, the Act has not simply substituted a new administrative quagmire. Instead, the Act creates two procedural streams, one intended for minor offences and the other for major ones. Either may be utilized for any provincial offence, since it is the gravity of the conduct giving rise to the prosecution rather than the abstract gravity of the offence itself which properly determines whether the technicalities of a formal procedure are necessary, or whether the new, simple, expeditious procedures are appropriate.

However, once the Crown proceeds under the simplified procedures, the maximum penalty which may be imposed is a penalty appropriate for a minor offence - a fine which cannot exceed the lesser of three hundred dollars or the maximum prescribed for the offence. Imprisonment will not be available, except as an ultimate, and highly restricted, sanction for failure to pay a fine.

Under the Act, the simplified procedure applies to offences commenced by the issuance of a certificate of offence, similar to the present summary conviction ticket generally used for driving offences. The more formal procedure will apply where the complainant swears an information and a summons or warrant is issued to bring the defendant before the court.

All police officers, together with a new class of officers known as provincial offences officers, will be empowered to commence proceedings with a certificate, thus invoking the simplified procedures. This discretion flows from the authority currently vested in police officers to decide whether the conduct in question merits a charge being laid, and if so, which one. The new discretion given under this Act is subject to administrative controls. As well, a decision to use the simplified procedure may be overridden by a senior officer or Crown Attorney, who may require that the matter be prosecuted as a serious offence using the stricter procedures.

All charges laid by one citizen against another will be commenced by way of information, since this requires the complainant to satisfy a justice that he or she has reasonable and probable grounds to believe an offence has been committed. Proceeding in this way does not increase the penalty to which the defendant is exposed; it merely removes the ceiling placed on penalties where the certificate procedure is utilized.

## 2. The Provincial Offences Court

In its Report on the Administration of Ontario Courts, the Ontario Law Reform Commission recommended that:

> "A citizen charged with speeding or with a parking violation should not have his case dealt with in court along with such charges as rape and robbery. Few perhaps would deny the different degrees of culpability which our society recognizes and expresses in its laws with respect to the various categories of offences. A minor violation should not be associated in this manner with more serious offences."

To give effect to this recommendation, a new court will be created by an amendment to The Provincial Courts Act. Called the Provincial Offences Court, it will hear and determine all trials of provincial offences. Provincial Judges and Justices of the Peace acting under a Provincial Judge's direction will preside in this court. Justices of the Peace will generally conduct all matters except those which, by their gravity, call for the attention of a Provincial Judge. In many centres there will be a physical separation of the Provincial Offences Court from the Provincial Court (Criminal Division) in which trials of provincial offences are now held together with criminal offence trials; in others the distinction may often be notional. But the basic concept that alleged provincial offenders are not interchangeable with alleged criminals is established. The long term result should be the creation of an atmosphere in the Provincial Offences Court which is more informal and less legalistic than the Criminal Division. (See the discussion at pages 92-93.)

## 3. Minor Offence Prosecutions: Certificate Procedure

At present the procedural framework under which all provincial offences — however minor — are brought to court, tried and disposed of resembles in its structure the prosecution of serious criminal offences. Adoption of this structure has meant that from service of a summary conviction ticket to the issue of a warrant of committal where a fine is unpaid, some forty-six separate administrative acts are required. Each of these steps adds to the burden of paperwork, forms, and procedures.

The Act is designed to streamline the procedure under which minor offences are prosecuted, simplifying and expediting matters for the defendant while protecting his procedural rights and greatly reducing the costs now borne by the taxpayers. Persons who are served with an offence notice (similar to the present summary conviction ticket) will be given two important new procedural rights: walk-in pleas of guilty with explanations, and written defences which may be raised without appearing for trial. The two basic existing procedural rights will be maintained, these being the right to a full trial on the merits and the right to pay a set fine out of court for designated offences. The Act will to a large extent eliminate for minor offences one particularly expensive feature of the existing system: trials held in the absence of the defendant.

On being served with an offence notice, the defendant may choose which of the four basic responses he or she wishes to make: (1) full trial on the merits; (2) not guilty plea with a written explanation; (3) guilty plea with an oral explanation; or, (4) for designated offences, payment of a set fine out of court. Dealing first with the two new responses, it should be noted that one of them, the walk-in guilty plea, has been successfully implemented at the North York Traffic Tribunal.

The basic premise behind the provision of this right is the inappropriateness of requiring a defendant to miss work or engage counsel or an agent to attend a trial at which he only intends to dispute the amount of the fine or seek time to pay it. The walk-in guilty plea allows the defendant to attend the court at his convenience, without an appointment. In some centres in the province, it may be possible to keep offices open on certain evenings to facilitate this process.

The defendant will appear informally in the justice's office, enter his guilty plea, then make his explanation or request additional time to pay the fine. If the justice is satisfied that the defendant did commit the offence, he or she will enter a conviction, then consider the explanation in assessing the penalty. The fine the justice imposes cannot exceed the amount set for out-of-court payment, but the justice will be able to impose a lesser fine. For the defendant, this route provides a quick, convenient means of offering an explanation or seeking additional time to pay a fine. When utilized, it also results in tremendous savings to the province, since it eliminates the need to schedule and hold a trial or to bring witnesses, particularly highly-paid police officers, to court when they are not needed because a guilty plea is being offered.

Experience with this option at the North York Traffic Tribunal has shown that it:

(1) allows an offender to dispose of the offence at a time which is convenient to him;

(2) does away with the need for and the cost of a full trial where an offender admits that he committed the offence, but simply wishes to give an explanation as to why the offence occurred or seek time to pay the fine;

(3) frees the courts for actual trials, thus reducing delay in the courts;

(4) encourages a better relationship between the offender and the justice system, as demonstrated by the enthusiastic response of offenders who have been exposed to the Tribunal;

(5) does away with the need for the police officer to appear and give evidence on that particular offence;

(6) requires only the time of a Justice of the Peace as there are no other court personnel in the hearing room.

A further alternative to the existing system provides for those who, although convinced that they are not guilty of an offence, pay the fine out of court to avoid the inconvenience of a court appearance. It will permit a defendant to plead not guilty and deliver to the court a written explanation

or submission. This will be considered by a justice, who must direct that a trial be held unless no reasonable ground of defence is disclosed in the explanation or submission.

If the justice directs a trial, the defendant's views will be before the court even though he or she is not. The court in which the trial is held can direct questions to the Crown's witnesses concerning the defendant's submissions, which, although not themselves evidence, do allow the court to direct its mind to the issues raised. After hearing the evidence, and considering the matters raised in writing by the defendant, the court may acquit or convict the defendant. If the defendant is convicted, the written material may be taken into account in assessing the penalty. Thus, for example, a motorist from Red Lake who is charged in Ottawa with failing to stop at a stop sign might explain in writing that he had been unable to stop because the road was covered with wet leaves. At the trial of the offence, a Justice of the Peace could ask the police officer if this could have been the case; if so, the Red Lake motorist could be acquitted, or have a lower penalty assessed following a conviction, without returning to Ottawa for a trial.

A defendant who does raise a reasonable defence in his written material will therefore be able to place his theory before the court without having to appear. Of course, if evidence is required to support this theory the defendant will generally have to appear, rather than use this approach. As well, there is no requirement that a trial will be held every time a written defence is submitted; if the explanation does not disclose a reasonable ground of defence, the justice may convict the defendant without directing a hearing.

Crucial to an evaluation of the two foregoing alternatives is the fact that the Act retains the present right to a full trial. The only change from the existing system will be a requirement that a defendant who intends to have a trial notify the court office of his intention within fifteen days of receiving the offence notice. Notification is accomplished by filling out the appropriate part of the offence notice and delivering it by mail or otherwise to the court office. On receipt of this notification, the clerk will then set a fixed date and time for the trial, often giving a reasonably precise time rather than just indicating morning or afternoon as at present.

Knowing the number of trials at which there will be not guilty pleas will permit the court office to schedule trials to maximize the convenience of defendants and the effective use of the court's time. It will also remedy the present problem arising from the fact that prior to the first appearance date, the police officer, prosecutor and court do not know whether or not the defendant will appear for trial, appear and plead guilty, or not appear at all. As a result, at present, prosecutors often do not subpoena their witnesses for the first appearance date. While the summons warns the defendant that the matter may not proceed on the day set out, this is often

misunderstood. The fact that the defendant and his witnesses must accept an adjournment in order that Crown witnesses may be summonsed and the Crown's case prepared, is a source of considerable dissatisfaction. The Act alleviates this problem; moreover, it will make it possible to give police officers more precisely fixed times for trials at which they are witnesses, in addition to eliminating the need to bring them to court unless their testimony is required. Savings here will be enormous.

Under the Act, if the defendant does not elect one of the procedural options, or pay a set fine out of court within fifteen days of being given the offence notice, a conviction will be automatically entered. This procedure follows the default judgment concept in civil matters, where failure to respond is deemed to be an indication that the defendant does not dispute the allegation. The Act adopts this procedure for minor offences in place of the criminal law requirement that a trial in the absence of its defendant be held in all cases where the defendant does not appear to plead guilty or have a trial. Under the Act, only where a defendant has submitted a written defence which has resulted in a trial being scheduled or has indicated his intention to have a trial, but fails to appear at the time set for the trial, will a trial in the absence of the defendant be held for minor offences.

Under the present system, it is estimated that nearly 780,000 of the 1,276,000 summary conviction tickets served in 1976 resulted in trials in the absence of the defendant. Each of these trials required the following procedural steps:

(1) Coordination of police officers and their court officer to ascertain court days for the officer, possibly involving computer use in some areas;

(2) The officer issues or serves a ticket, setting one of his or her court dates as the appearance date;

(3) The officer then swears the information;

(4) The officer diarizes the offender for a specific court day;

(5) The court diarizes the offence for payment;

(6) Where payment is not made, the offence is diarized by the court for the court calendar and by the officer for his court date;

(7) The offence is docketed by the court on the day appointed, when the information is located, numbered, listed, etc.;

(8) Attendance by the officer at court on the court day, including a waiting period (or if officer is not available the case may be adjourned for evidence requiring repetition of steps 4, 6, 7 and 8).;

(9) A trial is held in the absence of the defendant, and a conviction generally entered. The clerk then records this for enforcement procedures.

These nine procedures can involve up to forty sorting, filing, recording and other administrative and procedural steps. Yet, a trial in the absence of the defendant, in which the prosecutor presents evidence which stands without challenge, affords little if any real protection for a defendant. It is estimated that the cost of police time alone for these trials runs into millions of dollars each year.

Two other changes are made by the Act in the procedure established for minor offences. The officer who issues the certificate of offence and offence notice will be able to certify the truth of his allegation without swearing an oath. At present, even where a ticket is issued the copy of the ticket referred to as the information must be taken before a justice and sworn. Partly because some justices still receive a fee for each information they swear, and partly because of the enormous numbers of tickets being issued each year, this requirement is extremely expensive, yet does not provide any significant protection for defendants.

Because the Act assumes that a person who does not plead not guilty to an offence is not disputing the allegation, there will no longer be any need to have the officer swear to that allegation. Where there is a not guilty plea with a trial, the officer will testify, thus permitting his allegations to be tested under oath in open court. Thus the practical rights of a defendant to test the allegations against him are not reduced, but the expensive charade of swearing informations where there is an admission of guilt is abolished.

The Act also provides a fail-safe procedure where a defendant has been convicted when he or she did not respond to a notice. If, in fact, the defendant did respond, but through no fault of his own the response did not reach the court office, or if delivery of a notice from the court to the defendant did not in fact occur, the defendant may appear before a justice within fifteen days of learning that he has been convicted. The defendant need only swear an affidavit before the justice attesting to the facts; the justice will then strike the conviction and direct that a trial be held. This ensures that the expedition accomplished by the new procedures does not prejudice the basic rights of defendants.

## 4. Simplified Appeals for Minor Offences

Where an offence has been prosecuted under the minor offence procedure, the parties have an automatic right to the quick, simple, inexpensive appeal created by the Act. To launch this appeal a defendant need only complete a prescribed form at the office of the clerk of the court. Once this is done, notice of the date of the hearing of the appeal will be given to both parties, with the appeal perhaps being heard within a week or two of the decision appealed from. This compares exceedingly well with the present delay of from six to as many as twelve or eighteen months.

The appeal is designed to permit the litigants to appear without legal representation while at the same time maintaining the capability to deal with strict legal arguments when such are raised. Informality, however, will be stressed; the emphasis will be on resolving the dissatisfactions felt by a party rather than simply settling abstract legal principles.

Where the parties to the appeal are not represented by counsel or have not previously defined the issues, the judge may first make inquiries of them to delineate the issues which are to be resolved. Many misunderstandings can be cleared up at this stage; frivolous appeals can also be readily disposed of. Having determined the real issues, the judge then has two basic procedural options. The appeal can either be determined by holding a completely new trial, this time before a judge sitting in the Provincial Court (Criminal Division), or by informally reviewing the proceedings from which the appeal is taken. If the latter course is taken, the judge can still at a subsequent point during the review decide to hold a new trial if the issues then appear to call for it.

While the appeal by way of a new trial is similar to the procedure which until recently was the prime appeal procedure for provincial offences, the review represents a complete departure from the ritualistic formality which permeates appeals in criminal cases. Instead of gowned counsel arguing before panels of judges, the review will be in the nature of a shared search for justice without ceremonial formalities. However, this will not preclude the parties from raising, if they so desire, strict legal issues for the Judge to determine.

On a review the judge will be able to listen to all or part of the tape recording of proceedings in the Provincial Offences Court. A typed transcript will not have to be provided unless the judge decides it is necessary in any particular case. As well, the judge can hear witnesses, receive reports from the justice who presided at trial, and act upon statements of fact to which the parties agree. Having reviewed the proceedings below, and having heard the views of the parties, the judge may affirm, reverse or modify the decision. In determining the issues raised by the appeal, the judge is statutorily directed to consider the consequences of the decision appealed from for the defendant, including the imposition of demerit points or any suspension or restriction of statutory privileges.

It is expected that the flexibility, speed and convenience of this new form of appeal will accomplish three important goals:

(i) ensuring both fairness and the appearance of fairness to defendants who feel justice was not done at their trial, but who ordinarily would be deterred from appealing by the perceived cost and complexity of an appeal;

(ii) enhancing and supporting the supervisory functions of the provincial judges in relation to the justices of the peace who will commonly conduct trials in the provincial offences court;

(iii) discouraging the launching of frivolous appeals designed only to delay the impact of the conviction upon the defendant. The courts today face enormous backlogs of appeals in cases where defendants have lost driving privileges, with many of these appeals being commenced only to defer the day of reckoning.

## 5. Sentencing and Fine Enforcement

The Act is intended to resolve the present anomoly of large numbers of persons being jailed for failing to pay fines imposed for minor offences while extremely few persons are being sent to jail as a punishment for even the serious provincial offences. Recognizing the fine as the chief means by which the community's disapproval is to be brought home to persons who commit provincial offences, the Act establishes effective means for actually collecting those fines which are imposed. This will bring about drastic savings in the present expenditures for detecting, arresting and incarcerating defaulters while at the same time collecting the revenue from fines which is now lost when offenders are jailed for defaulting. More fundamentally, it will eliminate the taint of the debtor's prison from fine enforcement.

The Act removes imprisonment from the general penalty section, making it available as a sentencing option only where a particular Ministry establishes it in a particular statute. This provision of the Act will not come into force until July, 1980, thus giving Ministries which now deliberately rely upon the general penalty section for the penalty of imprisonment a chance to amend their statutes. The Act gives courts the power, in exceptional circumstances, to relieve against minimum penalties set by the Legislature. This is not intended to allow courts to overrule the Legislature's view of the gravity of an offence, but merely to provide for those exceptional cases where imposition of the minimum penalty would amount to oppression of, for example, a fixed income pensioner. Minimum fines may in these circumstances be replaced by a suspended sentence; minimum jail terms (of which there are extremely few) may be replaced by a fine of up to $2,000 in additional to the maximum fine provided for the offence.

The sentencing provisions of the Act are based upon the assumption that a fine is a flexible, adaptable, inexpensive and appropriate means of conveying to the offender the community's disapproval of his or her conduct. In practice, jail is rarely imposed as a first-instance sanction; the fines imposed almost always vary between twenty and two hundred

dollars. A random sample of cases determined in the City of Barrie indicated that 80% of the fines imposed for provincial offences were fifty dollars or less, while 40% were twenty-five dollars or less.

Given the central importance of the fine in the enforcement of provincial offences, and the relatively small amounts of money involved, particular emphasis in designing this Act was placed upon the creation and support of mechanisms to ensure that the fines which are imposed are paid. At present, most fines are routinely backed up by a warrant of committal to jail. When the fine goes into default, a warrant for the arrest of the offender is issued. This must be processed by the court office and the police, who then must utilize highly paid officers to attempt to execute the warrant. When the offender is found, he or she must be processed by the correctional institution, with incarceration itself costing the taxpayers approximately forty-four dollars per day. Of course, once the offender is jailed the fine is satisfied; to the costs of jailing the offender must be added the loss of revenue from the uncollected fine.

A further problem with the use of jail in default to enforce payment arises from the opportunity it gives the scofflaws to defeat the system. Most warrants of committal actually issued are the result of unpaid parking tickets, with the sentence being two days in jail in lieu of payment of the fine. Because these sentences all run at the same time, some people are able to eliminate hundreds of dollars of fines by spending Friday night and Saturday morning in jail. The new Act eliminates this by making imprisonment an option for the court, not for the offender.

The basic thrust of the Act is an attempt to keep fines from being in default and to end the automatic issuance of a warrant of committal when they are. A justice who imposes a fine may elicit and consider any evidence concerning the economic circumstances of the offender. The court may direct questions to the offender to obtain this information but, of course, the offender need not answer. The principal purpose of this direction is to prevent fines being imposed which simply must go into default because the defendant cannot pay them.

Once a fine is imposed, a period of fifteen days is statutorily granted to the offender for payment of the fine. The court must ask the offender if he or she requires further time to pay the fine, which time is to be granted unless the justice finds that the request for more time is not made in good faith or would likely be used to avoid payment of the fine. Time may be extended by ordering periodic payments instead of simply deferring the date upon which the fine is due.

The offender is also permitted by the Act to apply subsequently for further extensions of payment where he or she is genuinely unable to pay the fine. The application is made in writing to the court, although a justice can ask the offender to attend before him to answer questions under oath or otherwise. The emphasis here is on having the offender acknowledge

his guilt and his responsibilities by paying the fine, even if this requires a substantial period of time.

However, if the offender does default on payment of all or part of the fine after a reasonable opportunity to pay has been granted, then other means must be resorted to if the integrity of the administration of justice is to be maintained. The Act directs the justice to first order the suspension, non-issuance or non-renewal of any permit, licence, registration or privilege in respect of which suspension is authorized by any Act for nonpayment of the fine. At present, only Acts governing driving and motor vehicles authorize suspensions for this purpose, but it is expected that other Acts will follow this lead. Once a person's licence is suspended, it will not be renewed until the fine is paid; further penalties including incarceration can result from carrying on the licenced activity without a licence. Current experience indicates that in most cases, licence suspension will bring about payment of the fine.

The Act also permits a justice to direct the court clerk to file a civil judgment against the offender. This is enforceable in the same manner as any court-ordered payment; if need be the defendant's assets can be sold to satisfy the fine.

Only when any available suspensions have been tried and have failed, and where the justice feels that civil enforcement or any other reasonable means of collecting the fine would not likely prove successful in a reasonable period of time, can a warrant be issued for the arrest and detention of the offender. Before this can be done the offender will have to have been notified that the justice was intending to issue a warrant. The defendant could then appear and make representations to the justice as to why a warrant should not issue. Even after a warrant is issued, the defendant can apply for further extensions of time which can be granted in appropriate circumstances, thus postponing the execution of the warrant.

However, if an offender is incarcerated, he or she will no longer be able to satisfy all outstanding fines by a Friday night to Saturday morning jail appearance. Jail in default will consist of a minimum of three days plus 1 day for every twenty-five dollars or part thereof outstanding. In addition, where there is more than one fine in default, the jail terms for each of the defaulted fines will be served consecutively. This prospect of a lengthy jail term ought to prompt most persons to make arrangements to pay their fines.

Recognizing that exceptional cases will always come before the courts, the Act permits the sentencing justice to order that no time to pay beyond the 15 day automatic period be granted and that the offender be jailed if the fine is not paid when due. At the other end of the scale, circumstances may be such that the offender can never hope to pay the fine, even by instalments. An example might be a fixed income pensioner who has been fined for a traffic offence, but who has sold his car and never

intends to drive again. In circumstances such as these, the sentencing justice may order that even if the fine is unpaid, jail shall not be resorted to, with licence suspension being the only immediate sanction. The availability of civil enforcement would protect the community against a change in the offender's financial circumstances, but jail would not be used where no purpose would be served. This power will also be useful if the justice is confronted by an offender who wishes to become a martyr by being incarcerated.

Although the Act greatly minimizes the use of jail as a sanction for non-payment, it does not eliminate it. This flows from the fact that the fine is not like a civil debt; it is a punishment, one of the purposes of which is to deter the offender and others from similar conduct. The means of collecting the fine can therefore be, in appropriate cases, onerous. Under the Act, virtually nothing short of willful non-payment will result in incarceration, but the offender who creates this situation for himself has no valid complaint when he finds that incarceration for non-payment is now a very substantial penalty indeed.

## 6. Arrest: No General Power

The question of arrest raises delicate yet very practical problems. It involves the balance between effective police work and individual liberty. There is now a very limited power of arrest for provincial offences; in the few cases where the power does exist it is explicitly set out in the statute creating the offences. For instance **The Highway Traffic Act** provides a power of arrest for careless driving and approximately a dozen other specific offences, but no arrest for the scores of other offences set out in the statute. **The Petty Trespass Act** provides its own special arrest power as do a handful of other statutes including **The Game and Fish Act** and **The Liquor Licence Act.** There is no power of arrest for municipal bylaws and no general power of arrest under **The Summary Convictions Act.**

Arrest powers are rare. They have been sought and granted very sparingly. Under the present **Summary Convictions Act** the only way to create an additional arrest power is for the concerned Minister to satisfy Cabinet of its necessity with respect to each individual offence and then make his case on the floor of the Assembly.

The police community has argued strongly for a limited general power of arrest, on the basis that its absence can create real enforcement problems. They point out that a person can commit an offence like jaywalking or ticket scalping in plain view of a crowd and then, if he refuses to identify himself to an officer, simply thumb his nose and walk away or else continue to repeat the offence with impunity. Having no power of arrest, the officer has no power to require identification and can only stand by and helplessly watch the law being openly flouted. The

police suggest that this gap in the law is capable under certain circumstances of bringing the whole process of the law into disrepute and puts a real premium on law breaking and failure to cooperate with the police.

The Morand Commission on Metropolitan Toronto Police Practices recommended, as a means of avoiding unnecessary conflict between the police and public, that an officer should have the power to require satisfactory proof of identity or address, and, if these are not provided, the power of arrest.

Nonetheless, the basic principle of individual liberty sustains the principal arguments for keeping arrest as an extraordinary power to be granted sparingly, only after a case has been made out for each individual extension of the power. Every arrest restrains an individual of his liberty and provides a stark exception to the fundamental rule that no member of the community should be restrained of his liberty without a judicial hearing and without a chance to be heard by a judicial officer. Ontario tradition has leaned against any wholesale power of arrest. The McRuer Report, and events which preceded the appointment of the Royal Commission of Inquiry into Civil Rights, reflected public sensitivity to police powers generally and particular sensitivity to any power to detain without a court hearing. Although circumstances have changed since the McRuer Report, largely through the implementation of the relaxed bail and release provisions of **The Bail Reform Act**, arrest without warrant is still a very grave power.

The question is whether such a grave power is appropriate, in most cases, for petty offences. Although extended arrest powers are arguably necessary for full enforcement of petty offences, there are few petty offences where a court after conviction would imprison the accused. If deprivation of liberty is almost never imposed after trial and conviction, why should it be generally available before trial? Jaywalkers and ticket scalpers are almost never deprived of their liberty by imprisonment after conviction by a judicial officer. Why should they be generally subject to deprivation of their liberty before they have been charged?

The answer relates to effective enforcement and proof of indentity. The real reason for the arrest is not the suspected offence of jaywalking or ticket scalping, but the failure to produce satisfactory identification. The limited general arrest power is not really directed against a repetition of the offence. The repeated commission of an offence in face of a police order to stop can constitute the **Criminal Code** offence of obstructing police and can be controlled through the criminal process.

The limited general power of arrest is thus only demonstrably necessary in the case of failure to identify oneself to a police officer's satisfaction. The argument for the extended power rests therefore on the asserted need for every member of the community, suspected of a petty

offence, to be able to identify himself to a police officer's satisfaction. Compulsory identification would undoubtedly cure a number of law enforcement problems. The difficulty is that compulsory identification has implications beyond the immediate problem of effectively enforcing the law against petty offences. To introduce it for those suspected of petty offences would raise the spectre of compulsory identification, identity cards, and the entire weight of police machinery needed to enforce a compulsory identification system.

For these reasons, the Act does not create a general arrest power.

## 7. The Creation of a Self-Contained Code of Procedure

The statutory style of the present **Summary Convictions Act** confuses lawyers and judges, to say nothing of the public. The present Act depends upon a complex system of incorporation by reference from the Criminal Code. Generally the Act adopts, through incorporation by reference, the provisions of the Criminal Code which apply to minor criminal offences. But to find the law on any point one must go to **The Summary Convictions Act,** then to Part XXIV of the Criminal Code, then search through the 719 other sections of the Criminal Code to see whether they are directly or indirectly incorporated into Part XXIV of the Code, and then through the provisions of **The Summary Convictions Act** in an attempt to decide whether the incorporated provisions are technically inconsistent with the overriding provisions of **The Summary Convictions Act.** This makes the law hideously complicated. It has been criticized from the Ontario Supreme Court Bench and provides a fertile field for confusion and endless technical arguments.

The new Act eliminates these problems by ending all reference to the Criminal Code, replacing that statutory scheme with a self-contained Code of procedure.

The creation of this new, self-contained code of procedure provided the opportunity to examine carefully the law now in force in Ontario and to discard or substantially modify its undesirable features. Every provision of this Act is designed to ensure that it is appropriate for the types of offences being brought before the Provincial Offences Court.

In addition to the obvious advantages of prosecuting provincial offences under a code of procedure specifically designed for them, the following additional advantages are expected:

(1) elimination of the hidden side-effects of simply adopting a piece of legislation designed for another type of offence;

(2) elimination of the mental and legalistic gymnastics now necessary in order to find out what the law is on any given point;

(3) making the law more accessible to the public;

(4) making the law more certain and removing the complex ambiguities which result from the present system.

## 8. Parking Offence Procedure

In Metropolitan Toronto alone nearly three million parking tickets are being issued each year, with 60% of them requiring resort to some or all of the court process for collection.

The cost of enforcing each unpaid parking ticket, if the entire court enforcement process is required, ranges between fifty and seventy-five dollars. This is perhaps the best illustration of the extent to which the application of a strict criminal process to a patently regulatory matter results in an extravagantly wasteful system replete with inessential steps, massive amounts of paper work, and enormous manpower requirements.

Of the twenty steps now involved in enforcing payment of parking tickets, thirteen are caused by the requirement of personal service. Under the present adopted criminal procedure, the owner of a vehicle cannot be convicted of a parking offence without having been personally served with a summons. Thus if no response is made to the ticket placed on the car or to the summons sent by mail, a police officer must seek out the owner personally.

In the meantime, the matter will have been needlessly scheduled for trial when the mailed summons was sent out, and must again be scheduled after the owner is served. At least two court dockets are therefore set up, with the enforcement officer having to attend both scheduled hearings. If, as is usual, the defendant fails to appear, a trial in the absence of the defendant ultimately must be held, with the officer testifying under oath. Of course, the summonses to the defendants will have to have been preceded by a sworn information, which forms the basis of the trial.

It is manifest that the formality of the procedure is entirely out of proportion with the regulatory nature of the parking offence. No hint of community disapproval accompanies a parking offence conviction, nor can the usual penalty of a five or ten dollar fine be said to express a strong community reaction to the offence.

Yet it is the enforcement of payment of these extremely minor penalties which is imposing one of the largest single workloads on the administration of justice in this province. At present there is no alternative to jailing offenders whose fines are in default. Therefore the entire police machinery of processing a warrant of committal, arresting an offender, and collecting the fine or conveying the offender to jail must be put into operation for insignificant amounts of money. To this of course, must be added the $44.00 per day cost of holding the offender in jail once he or she is arrested under the warrant.

To remedy this stunning imbalance between formal criminal procedure and the regulatory nature of parking offences, the Act eliminates the need for personal service on the owner. The owner will be deemed to be served when the parking tag is placed on his car or given to the person driving it. Failure to respond to the ticket will result in a conviction being imposed without the matter having to be placed on a court docket. Notice of the conviction will then be sent to the owner. If the owner did not in fact receive the tag, he will be able to have the conviction struck and a trial ordered by swearing an affadavit at the office of a Justice of the Peace attesting to that fact within fifteen days of learning of the conviction.

Through this procedure all of the expense of scheduling and rescheduling trials, personally serving documents and requiring the attendance of enforcement officers when there is no dispute will be eliminated. The present right to a full trial will be retained, but that process will only be invoked where the defendant has indicated that he wishes to plead not guilty. The absolute retention of this right, together with the fail-safe remedy for those few cases in which service did not in fact occur, will protect the rights of defendants who wish to challenge the case against them. Under the new Act, full protection will be available whenever it is needed, but, unlike the present system, enormous expenses will not be incurred to protect notional rights which defendants themselves have no interest in asserting.

Although the Act discourages the use of warrants of committal to enforce parking fine payment, the virtual elimination of jail for default of parking fines will be brought forward in another legislative package. This Act, however, does point the way to a solution to the problem of enforcing payment of fines by its emphasis on suspending statutory privileges.

## B. Explanation of the Act's Provisions

In this part the provisions of the Act are set out in full, together with brief explanatory notes. The purpose is to assist those who wish to consider in detail the changes effected by this Act.

**BILL** **1978**

# An Act to establish a Code of Procedure for Provincial Offences

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

**1.**- (1) In this Act, Interpretation

(*a*) "certificate" means a certificate of offence issued under Part I or a certificate of parking infraction issued under Part II;

(*b*) "court" means a provincial offences court;

(*c*) "judge" means a provincial judge;

(*d*) "justice" means a provincial judge or a justice of the peace;

(*e*) "offence" means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature;

(*f*) "prescribed" means prescribed by the rules of the court;

(*g*) "prosecutor" means the Attorney General or, where the Attorney General does not intervene, means the person who institutes proceedings to which this Act applies and includes counsel or agent acting on behalf of either of them;

(*h*) "provincial offences officer" means a police officer or a person designated under subsection 2;

(*i*) "set fine" means the amount of fine set by the court for an offence for the purpose of proceedings commenced under Part I or II.

Designation of provincial offences officers

(2) A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences.

Subsections (1) (a,b,c,d,f) are administrative and selfexplanatory.

Subsection (1) (e) is a central provision which ensures that the Act applies to all provincial statutes which create offences, however those offences are described. Rather than amend all of those statutes, the Act simply indicates that if an offence is created, it must be prosecuted under this Act.

Subsection (1) (g) combines the two definitions of "prosecutor" found in the Criminal Code (sections 2 and 720). It preserves the fundamental constitutional role of the Attorney-General in offence prosecutions, while permitting private individuals to conduct a prosecution under the Act unless the Attorney-General intervenes. The right to appear and act through someone who is not a lawyer is continued.

Subsection (1) (h) recognizes the new class of officers, created under subsection (2), who will be empowered to issue and serve offence notices and parking infraction notices. The intention is to encourage use of the simplified, more expeditious procedure which follows the issuance of an offence notice. Thus, for example, persons who operate weigh scales will likely be permitted to issue tickets on the spot rather than having to swear informations and have the police serve summonses. Provincial offence officers will have no powers of arrest or search and seizure, which powers are reserved exclusively for police officers.

Subsection (1) (i) defines the fine which may be indicated on an offence notice or parking infraction notice as the fine which will be accepted as an out-of-court payment. A fine for an offence may be set by the Senior Provincial Court Judge in each county. Where a Judge has set such a fine, provincial offence officers may give the defendant an offence notice showing the set fine which may be paid without attending court, instead of summonsing him or her to court.

Subsection (2) empowers each Minister of the Crown to designate individuals or classes of individuals as provincial offences officers. Their powers under the Act, outlined in the note to subsection (1) (h), will generally be in addition to other duties. Because they will have the power to commence proceedings which can lead to default judgment against a defendant, the Act requires a Minister to take responsibility for their appointment. Provision is made for the designation of classes of persons to permit existing and future enforcement groups to be designated as such.

**2.** The purpose of this Act is to replace the summary conviction procedure for the prosecution of provincial offences, heretofore adopted by reference to the *Criminal Code* (Canada), with a new procedure that reflects the distinction between provincial offences and offences of a more criminal nature. Purpose of Act R.S.C. 1970. c. C-34

This section is designed to assist the courts in interpreting the Act by drawing to their attention the core principle, that it is intended to replace entirely, rather than merely modify the existing criminal procedure. The procedures in the Act embody an entirely new philosophy; provincial offences are to be treated differently from criminal cases at every procedural stage, with that difference reflecting the fact that the rigid formalism of criminal procedure is inappropriate for provincial offences.

The section is also intended to indicate that since this Act is a complete replacement of the existing law, having an entirely different philosophical background, it is not to be interpreted in light of particular variations in wording from, or any similarity to, the existing provisions. Instead, each provision should be interpreted only in light of the overall objectives of the Act.

## PART I

### COMMENCEMENT OF PROCEEDINGS BY CERTIFICATE OF OFFENCE

**3.**-(1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of an offence may be commenced by filing a certificate of offence alleging the offence in the office of the court named therein. Certificate of offence

(2) A provincial offences officer who believes that one or more persons have committed an offence may issue, by completing and signing, a certificate of offence certifying that an offence has been committed and, Issuance and service

(*a*) an offence notice indicating the set fine for the offence; or

(*b*) a summons,

in the form prescribed under section 14 and shall serve the offence notice or summons on the person charged.

(3) The provincial offences officer shall certify on the certificate of offence that he personally served the offence notice or summons on the person charged and the date of service. Certificate of service

Certificate as evidence

(4) A certificate of service of an offence notice or summons purporting to be signed by the provincial offences officer issuing it shall be received in evidence and is proof of personal service in the absence of evidence to the contrary.

Payment of penalty

(5) The provincial offences officer who serves an offence notice or summons under this section shall not receive payment of any money in respect of a fine.

This procedure is conceptually similar to the procedure now set out in section 7 of The Summary Convictions Act. The concept which is continued here is that a person who is given an offence notice at the time and place of the offence need not be given as much written detail concerning the offence as the person who first learns of the charge some time later. The ability to resolve the matter by delivering a fine to the court by mail or otherwise reflects the minor regulatory nature of the offences for which the notice procedure will be used. The principal alteration from the existing procedure is the elimination of a sworn information where the procedure is used. Coupled with this change is the power to decide to proceed under the more serious information procedure even after proceedings have been commenced by certificate, as long as any set fine has not been paid. As well, at the time the officer issues the certificate, he may give the defendant a summons rather than the offence notice if no fine has been set for the offence or if the circumstances of the alleged offence require the defendant to answer in open court. A summons commands the defendant to appear in court for the trial of the offence; failure to do so invokes the procedures set out in section 53 of the Act.

Filing of certificate of offence

**4.** A certificate of offence shall be filed forthwith in the office of the court named therein.

Under section 3, filing the certificate in the court office commences proceedings, and therefore is the crucial date as far as limitation periods are concerned.

Dispute with trial

**5.**—(1) Where an offence notice is served on a defendant, he may plead not guilty by signing the not guilty plea on the offence notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver the offence notice to the office of the court specified in the notice.

Notice of trial

(2) Where an offence notice is received under subsection 1, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial.

This reiterates the defendant's unfettered right to have the allegation against him determined at a trial. For the reasons discussed above at pages 10-12 the section requires the defendant to notify the court office of his intention to have a trial. This permits efficient scheduling of court time, and allows the court of maximize the convenience of the defendant and complainant by giving them a fixed time for the trial, which should not have to be adjourned.

Dispute without appearance

**6.**—(1) Where an offence notice is served on a defendant and he wishes to dispute the charge but does not wish to attend or be represented at a trial, he may sign the not guilty plea on the offence notice and deliver the offence notice to the office of the court specified in the notice together with any written explanation or submission he wishes to make.

Disposition

(2) Where an offence notice is delivered under subsection 1, a justice may, in the absence of the defendant, and after considering the explanation and submissions of the defendant, direct a trial or, where no reasonable ground of defence is disclosed in the explanation or submission, convict the defendant and impose the set fine or such lesser fine as is permitted by law.

Trial

(3) Where the justice directs a trial under subsection 2, the court shall hold the trial and may, in the absence of the defendant and after considering the explanation and submissions of the defendant, acquit the defendant or convict the defendant and impose such fine as is lawful and considered just.

This is discussed above at pages 9-10.

Plea of guilty with representations

**7.** Where an offence notice is served on a defendant and he does not wish to dispute the charge but wishes to make submissions as to penalty, including the extension of time for payment, he may attend at the office of the court specified in the notice during regular office hours and may appear before a justice for the purpose of pleading guilty to the offence and making submissions as to penalty, and the justice may enter a conviction and impose the set fine or such lesser fine as is permitted by law.

This is discussed above at pages 8-9.

Payment out of court

**8.**—(1) Where an offence notice is served on a defendant and he does not wish to dispute the charge, he may sign the plea of guilty on the offence notice and deliver the offence notice and amount of the set fine to the office of the court specified in the notice.

Conviction

(2) Acceptance by the court office of payment under subsection 1 constitutes a plea of guilty whether or not the plea is signed and endorsement of payment on the certificate of offence constitutes the conviction and imposition of a fine in the amount of the set fine for the offence.

**This section simplifies court record keeping by making the endorsed certificate the formal conviction.**

Failure to respond to offence notice

**9.** Where the defendant does not, within fifteen days after he is served with an offence notice, deliver the offence notice to the office of the court specified in the notice or does not attend under section 7, he shall be deemed to not wish to dispute the charge and a justice may enter a conviction in his absence and without a hearing and impose the set fine for the offence.

**This is discussed above at pages 11-12.**

Signature on plea

**10.** A signature affixed to the form of plea of guilty or not guilty on an offence notice, purporting to be that of the defendant, is *prima facie* proof that it is the signature of that person.

**This eliminates technical problems while protecting defendants from any injustice.**

Failure to respond to summons

**11.** Where, in a proceeding commenced by a certificate of offence, the defendant is served with a summons under section 3 and fails to appear in response to the summons, the court may acquit or convict the defendant in his absence under section 53 and impose a penalty under this Part.

Once the formal court process has been initiated by resort to a summons, which commands the defendant to appear and does not give him or her the options set out above, then the matter must be resolved at a formal trial. This section refers the court to the provisions for a trial in the absence of the defendant, which is retained in section 53.

Reopening on failure of notice

**12.** Where the defendant has not had an opportunity to dispute the charge or to appear or be represented at a hearing for the reason that through no fault of his own the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied upon affidavit evidence of such facts, shall strike out the conviction, if any, and direct a hearing.

This fail-safe procedure is discussed above at page 12.

Penalty

**13.** Where a proceeding is taken by means of a certificate of offence under this Part in respect of an offence that is punishable by a fine of more than $300 or other penalty, the penalty therefor shall be a fine of not more than $300.

This section ensures that where the procedures governing a prosecution are appropriate for minor offences, the maximum penalty is also appropriate for a minor offence. No matter how serious the regular penalty for an offence, if the Crown elects to proceed under the less formal, more flexible minor offence procedure, the defendant's liability is limited to the lesser of the maximum fine for the offence or three hundred dollars.

Regulations

**14.**—(1) The Lieutenant Governor in Council may make regulations,

(*a*) prescribing the form of certificates of offence, offence notices and summonses and such other forms as are considered necessary under this Part;

(*b*) authorizing the use in a form prescribed under clause *a* of any word or expression to designate an offence;

(*c*) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

Sufficiency of abbreviated wording

(2) The use on a form prescribed under clause *a* of subsection 1 of any word or expression authorized by the regulations to designate an offence is sufficient for all purposes to describe the offence designated by such word or expression.

Idem

(3) Where the regulations do not authorize the use of a word or expression to describe an offence in a form prescribed under clause *a* of subsection 1, any word or expression may be used that gives the defendant reasonable notice of the offence.

**This is essentially similar to section 7 of the Summary Convictions Act, the principal difference being that the Lieutenant Governor in Council need no longer designate offences for the purposes of this procedure.**

## PART II

### COMMENCEMENT OF PROCEEDINGS FOR PARKING INFRACTIONS

Interpretation

**15.** In this Part, "parking infraction" means any unlawful parking, standing or stopping of a vehicle that constitutes an offence.

**This is self-explanatory.**

Municipal by-laws

**16.** Subject to the approval of the Lieutenant Governor in Council, the council of a municipality, including a regional, district or metropolitan municipality, may by by-law declare that this Part applies in respect of parking infractions that are offences under the by-laws of the municipality and, upon the approval of the by-law, this Part applies in respect of parking infractions under the by-laws occurring after the effective date of the by-law.

**This section allows individual municipalities to elect to have the Act's procedures apply to their parking offences.**

Certificate of parking infraction and notice

**17.**—(1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of a parking infraction may be commenced by filing a certificate of the parking infraction, in the office of the court named therein, within thirty days after the occurrence of the offence.

(2) A provincial offences officer who believes from his personal knowledge that one or more persons have committed a parking infraction may issue, by completing and signing, Issuance and notice

(*a*) a certificate of parking infraction certifying that a parking infraction has been committed; and

(*b*) a notice of parking infraction indicating the set fine for the infraction,

in the form prescribed under section 22.

(3) The parking infraction notice may be served on the owner of the vehicle identified therein by affixing it to the vehicle in a conspicuous place or by delivering it personally to the driver of the vehicle. Service of notice

This section recognizes that municipalities prefer to collect their parking fines by voluntary payment rather than court action. However, to ensure that a defendant is not subject to undue delay, the section requires that the municipality commence court proceedings within thirty days of the offence. Subsection 2 is self-explanatory, while subsection 3 is discussed above at page 21.
The service provisions of subsection 3, and hence the whole of this part, cannot be proclaimed until the vehicle registration system is converted to plate-to-owner registration.

**18.**—(1) Where a parking infraction notice is served, the owner of the vehicle may plead not guilty by signing the not guilty plea on the notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver it to the office of the court specified in the notice. Dispute with trial

(2) Where a parking infraction notice is received under subsection 1, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial. Notice of trial

This is discussed above at page 21.

**19.** Where the owner of the vehicle in respect of which a parking infraction notice is served does not wish to dispute the charge, he may deliver the notice and amount of the set fine to the address shown on the notice. Payment out of court

The payment will be to the municipality; the court office will become involved only with those defendants who dispute the charge or fail to respond to the notice.

Failure to respond to parking infraction notice

**20.**—(1) Where no notice is delivered under section 18 within fifteen days after the service of the parking infraction notice, the owner of the vehicle shall be deemed to not wish to dispute the charge and a justice may, upon being satisfied that the person being convicted is the owner and that payment has not been made under section 19 enter a conviction in his absence and without a hearing and impose the set fine for the infraction.

Notice of fine

(2) The clerk of the court shall give notice to the person against whom a conviction is entered under subsection 1 of the date and place of the infraction, the date of the conviction and the amount of the fine, and the fine or any part of the fine not paid within fifteen days after the giving of the notice shall be deemed to be in default.

The municipality will have the onus of satisfying the justice that the defendant owns the car and has not paid the fine. The provisions of section 79 will ensure that proof of ownership is accomplished in a manner which is acceptable to a trial court and is efficient and expeditious. Subsection 2 provides for a notice of conviction to be sent to the defendant since, unlike the offence notice, the court cannot be certain that the defendant was in fact served.

Reopening on failure of notice

**21.** Where the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied upon affidavit evidence of such facts, shall direct a hearing and strike out the conviction, if any.

This fail-safe provision is discussed above at page 21.

Regulations

**22.**—(1) The Lieutenant Governor in Council may make regulations,

(*a*) prescribing the form of certificates of parking infractions and parking infraction notices and such other forms as are considered necessary under this Part;

(*b*) authorizing the use in a form prescribed under clause *a* of any word or expression to designate a parking infraction;

(*c*) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

Sufficiency of abbreviations

(2) The use on a form prescribed under clause *a* of subsection 1 of any word or expression authorized by the regulations to designate a parking infraction is sufficient for all purposes to describe the infraction designated by such word or expression.

Idem

(3) Where the regulations do not authorize the use of a word or expression to describe a parking infraction in a form prescribed under clause *a* of subsection 1, any word or expression may be used that gives the defendant reasonable notice of the infraction.

**See note to section 14.**

## PART III

### COMMENCEMENT OF PROCEEDING BY INFORMATION

Commencement of proceeding by information

**23.** In addition to the procedure set out in Parts I and II for commencing a proceeding by the filing of a certificate, a proceeding in respect of an offence may be commenced by laying an information.

**This provides for commencement of the more formal procedure under the Act, fixing the time at which proceedings are commenced for the purposes of any applicable limitation period. As well, it preserves the right of the prosecutor to proceed under the more serious procedure even if an officer has commenced proceedings under the certificate procedure.**

Information

**24.**—(1) Any person who, on reasonable and probable grounds, believes that one or more persons have committed an offence, may lay an information in the prescribed form and under oath before a justice alleging the offence and the justice shall receive the information.

Idem

(2) An information may be laid anywhere in Ontario.

Subsection 1 is derived from section 455 of the Criminal Code. Subsection 2 permits an informant to swear an information at a place convenient to him, although, of course, the proceedings will have to be made returnable in a court having jurisdiction over the offence. (See section 30).

Issuance of summons or warrant

**25.**—(1) A justice who receives an information laid under section 24 shall consider the information and, where he considers it desirable to do so, hear and consider *ex parte* the allegations of the informant and the evidence of witnesses and where he considers that a case for so doing is made out,

(*a*) issue a summons in the prescribed form; or

(*b*) where the arrest is authorized by statute and where the allegations of the informant or the evidence satisfy the justice on reasonable and probable grounds that it is necessary in the public interest to do so, issue a warrant for the arrest of the defendant.

Summons or warrants in blank

(2) A justice shall not sign a summons or warrant in blank.

Counts

This is derived from section 453.3 of the Criminal Code, with the alteration that in appropriate cases the justice may act upon the sworn information alone without having to hear evidence. Subsection (1) (b) reinforces the position that there is no general power of arrest for provincial offences.

**26.**—(1) Each charge in an information shall be set out in a separate count.

Allegation of offence

(2) Each count in an information shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the defendant committed an offence therein specified.

Idem

(3) The statement referred to in subsection 2 may be,

(*a*) in popular language without technical averments or allegations of matters that are not essential to be proved;

(*b*) in the words of the enactment that describes the offence; or

(*c*) in words that are sufficient to give to the defendant notice of the offence with which he is charged.

(4) Any number of counts for any number of offences may be joined in the same information. More than one count

(5) A count shall contain sufficient detail of the circumstances of the alleged offence to give to the defendant reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to. Particulars of count

(6) No count in an information is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of this section and, without restricting the generality of the foregoing, no count in an information is insufficient by reason only that, Sufficiency

(*a*) it does not name the person affected by the offence or intended or attempted to be affected;

(*b*) it does not name the person who owns or has a special property or interest in property mentioned in the count;

(*c*) it charges an intent in relation to another person without naming or describing the other person;

(*d*) it does not set out any writing that is the subject of the charge;

(*e*) it does not set out the words used where words that are alleged to have been used are the subject of the charge;

(*f*) it does not specify the means by which the alleged offence was committed;

(*g*) it does not name or describe with precision any person, place or thing; or

(*h*) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.

(7) Where in a count an offence is identified but the count fails to set out one or more of the essential elements of the offence, a reference to the provision creating or defining the offence shall be deemed to incorporate all the essential elements of the offence. Reference to statutory provision

Idem

(8) A count is not objectionable for the reason only that,

(*a*) it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an offence the matters, acts or omissions charged in the count; or

(*b*) it is double or multifarious.

Need to negative exception, etc.

(9) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information.

**This combines sections 510 (1, 2, 3), 512, 519 (1), 520 (1) and 730 (1) of the Criminal Code, and replaces section 510 (5) with a provision (26(7)) giving statutory effect to the decision of the Supreme Court of Canada in Regina v. Coté (1977), 33 C.C.C. (2d) 353, 73 D.L.R. (3d) 752, 13 N.R. 27.**

Summons

**27.**—(1) A summons issued under section 25 shall,

(*a*) be directed to the defendant;

(*b*) set out briefly the offence in respect of which the defendant is charged; and

(*c*) require the defendant to attend court at a time and place stated therein and to attend thereafter as required by the court in order to be dealt with according to law.

Service

(2) A summons shall be served by a provincial offences officer by delivering it personally to the person to whom it is directed or if that person cannot conveniently be found, by leaving it for him at his last known or usual place of abode with an inmate thereof who appears to be at least sixteen years of age.

Service outside Ontario

(3) Notwithstanding subsection 2, where the person to whom a summons is directed does not reside in Ontario, the summons shall be deemed to have been duly served seven days after it has been sent by registered mail to his last-known or usual place of abode.

Service on corporation

(4) Service of a summons on a corporation may be effected by delivering the summons personally,

(*a*) in the case of a municipal corporation, to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation; or

(*b*) in the case of any other corporation, to the manager, secretary or other executive officer of the corporation or person apparently in charge of a branch office thereof,

or by mailing the summons by registered mail to the corporation, in which case the summons shall be deemed to have been duly served seven days after the day of mailing.

Proof of service

(5) Service of a summons may be proved by statement under oath, written or oral, of the person who made the service.

Subsections 1 and 2 are derived from section 455.5 (1,2) of the Criminal Code; subsection 3 from section 6(6) of The Summary Convictions Act; subsection 4 modifies the provisions of section 6(2) and 6(3) of The Summary Convictions Act by allowing service upon the persons named rather than the "mayor, president, or other head or the clerk, secretary or like officer of the corporation, or chief officer of a branch thereof." It is no longer sufficient to simply leave the summons at the chief place of business or office or branch, but rather the person apparently in charge of a branch office must be served. However, registered mail will now be considered as valid personal service on the corporation. Subsection 5 is derived from section 455.5(3) of the Criminal Code.

Contents of warrant

**28.**—(1) A warrant issued under section 25 shall,

(*a*) name or describe the defendant;

(*b*) set out briefly the offence in respect of which the defendant is charged; and

(*c*) order that the defendant be forthwith arrested and brought before a justice to be dealt with according to law.

Idem

(2) A warrant issued under section 25 remains in force until it is executed and need not be made returnable at any particular time.

This is derived from section 456, with the only alteration being the reflection in subsection 1(c) of the province-wide jurisdiction of justices.

## PART IV

### TRIAL AND SENTENCING

*Trial*

Application of Part

**29.** This Part applies to proceedings commenced under this Act.

**No matter how proceedings are commenced, once a trial is to be held there is no variation in the nature of the proceedings.**

Proper court

**30.**—(1) Subject to subsection 2, a proceeding in respect of an offence shall be taken in the provincial offences court in whose territorial jurisdiction the offence occurred.

Idem

(2) A proceeding in respect of an offence may be taken in the provincial offences court having territorial jurisdiction that adjoins that in which the offence occurred if,

(*a*) the court holds sittings in a place reasonably proximate to the place where the offence occurred; and

(*b*) the court and place of sitting referred to in clause *a* are named in the information or certificate.

Transfer to proper court

(3) Where a proceeding is taken in a court other than one referred to in subsection 1 or 2, the court may order that the proceeding be transferred to the proper court.

Change of venue

(4) Where, upon the application of a defendant or prosecutor made to the court named in the information or certificate, it appears to the court that,

(*a*) it would be appropriate in the interests of justice to do so; or

(*b*) both the defendant and prosecutor consent thereto,

the court may order that the proceeding be transferred to another court in Ontario.

Conditions

(5) The court may, in an order made upon an application by the prosecutor under subsection 3 or 4, prescribe conditions that it thinks proper with respect to the payment of additional expenses caused to the defendant as a result of the change of venue.

(6) An order under subsection 3 or 4 may be made notwithstanding that any motion preliminary to trial has been disposed of or that the plea has been taken and it may be made at any time before evidence has been heard. Time of order for change of venue

(7) The court to which proceedings are transferred under this section may receive and determine any motion preliminary to trial notwithstanding that the same matter was determined by the court from which the proceeding was transferred. Preliminary motions

(8) Where an order is made under subsection 3 or 4, the clerk of the court in which the trial was to be held before the order was made shall deliver any material in his possession in connection with the proceedings forthwith to the clerk of the court before which the trial is ordered to be held, and all proceedings in the case shall be held or, if previously commenced, shall be continued in that court. Delivery of papers

For historical reasons, there has always been a strong presumption that a criminal trial should be held in the county where the offence occurred. The Act maintains this in subsection (1) with the modification in subsection (2) which is intended to enhance the convenience of the parties. Thus if a defendant commits an offence near the boundary of two counties, but the nearest court in the county in which the offence occurred is much further away than a court in the adjoining county, proceedings may be taken in the latter county. The defendant is protected from any possible abuse by the requirement that there not only be a more conveniently located court in the next county, but also that that particular court must be made the place of trial.

Subsection (3) deals with the situation which arises when the informant brings proceedings in a court which does not have territorial jurisdiction over the offence. Rather than force the informant to recommence proceedings, this provision allows the court in which they were erroneously brought to transfer them to the proper court.

Subsection (4) creates a broad, general power to change the place of trial, on consent of the parties or in any other case where it is appropriate in the interests of justice to do so. The consent provision is new; the wording of the residual power has been deliberately changed from that used in the Criminal Code (s. 527) to avoid the highly restrictive interpretation which has been placed on it.

Subsection (6) reinforces the intention to remove the present restrictions on changes of venue; only after evidence has been heard will it be too late to transfer proceedings.

Subsection (7) ensures that the trial Judge is not bound by a ruling of another Judge made before a change of venue; the cardinal principle of the trial Judge's control over proceedings is thus maintained.

Subsections 5 and 8 are self-explanatory.

Justice presiding at trial

**31.** -(1) The justice presiding when evidence is first taken at the trial shall preside over the whole of the trial.

When presiding justice unable to act before adjudication

(2) Where evidence has been taken at a trial and, before making his adjudication, the presiding justice dies or in his opinion or the opinion of the chief judge of the provincial offences courts is for any reason unable to continue, another justice shall conduct the hearing again as a new trial.

When presiding justice unable to act after adjudication

(3) Where evidence has been taken at a trial and, after making his adjudication but before making his order or imposing sentence, the presiding justice dies or in his opinion or the opinion of the chief judge of the provincial offences courts is for any reason unable to continue, another justice may make the order or impose the sentence that is authorized by law.

Consent to change presiding justice

(4) A justice presiding at a trial may, at any stage of the trial and upon the consent of the prosecutor and defendant, order that the trial be conducted by another justice and, upon the order being given, subsection 2 applies as if the justice were unable to act.

This section governs the point at which a justice becomes seized of a case, fixing it at the point when evidence is first heard. After that point, no other justice may preside unless (i) the justice dies or is otherwise unable to act (subsections 2 and 3), or (ii) where the justice, on the consent of the parties (subsection 4), directs that the matter should be heard by another justice. This last provision cures the problems presently caused when an out-of-town justice embarks upon a trial which will last longer than he or she can remain in the town where the trial is being held. Rather than requiring an adjournment of proceedings to a date when the justice can return, and also requiring the justice to travel a considerable distance again, the provision allows the simple expedient of re-convening the trial before a local justice. Again the parties are protected from any prejudice by the requirement that all parties must consent before it can be made. Subsections 2 and 3 also permit a justice to easily disqualify himself if at some point in the proceedings a matter arises which might cast doubt on the perceived propriety of his continuing. An example of this would be a justice learning that one of the witnesses was a relative.

The provisions of this section may be compared with sections 725 and 726 of the Criminal Code.

**32.** The court in which proceedings are taken or to which proceedings are transferred retains jurisdiction over the information or certificate notwithstanding the failure of the court to exercise its jurisdiction at any particular time or that the provisions of this Act respecting adjournments are not complied with. Retention of jurisdiction

This is similar to, but somewhat broader than section 440.1 of the Criminal Code. It is designed to remove technical objections to the jurisdiction of a court grounded in procedural ommissions or technical faults concerning adjournments. While the court may have to take steps to regain jurisdiction over the person of the defendant, jurisdiction over the certificate or information is not affected. See also **The Queen v. Doyle** (1976) 29 C.C.C. (2d) 177, 68 D.L.R. (3d) 70, 9 N.R. 285 (S.C.C.).

**33.**—(1) In addition to his right to withdraw a charge, the Attorney General or his agent may stay any proceeding at any time before judgment by direction to the clerk of the court in which the proceedings are conducted and thereupon any recognizance relating to the proceeding is vacated. Stay of proceeding

(2) A proceeding stayed under subsection 1 may be recommenced by direction of the Attorney General or his agent to the clerk of the court in which the proceeding was stayed but a proceeding that is stayed shall not be recommenced, Recommencement

(*a*) later than one year after the stay; or

(*b*) after the expiration of any limitation period applicable, which shall run as if the proceeding had not been commenced until the recommencement,

whichever is the earlier.

This modifies section 732.1 of the Criminal Code. The opening words make it clear that this statutory power is additional to, and not in derrogation of, the Attorney-General's historical and constitutional authority to withdraw any charge. The section also empowers the agents of the Attorney-General (Crown Attorneys and Crown Counsel) to exercise these powers in his name without express direction from him.

**34.**—(1) An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash the information or certificate before the defendant has pleaded, and thereafter only by leave of the court. Motion to quash information or certificate

Dividing counts

(2) A defendant may at any stage of the proceeding apply to the court to amend or to divide a count that,

(*a*) charges in the alternative different matters, acts or omissions that are stated in the alternative in the enactment that creates or describes the offence; or

(*b*) is double or multifarious,

on the ground that, as framed, it prejudices him in his defence.

Idem

(3) Upon an application under subsection 2, where the court is satisfied that the ends of justice so require, it may order that a count be amended or divided into two or more counts, and thereupon a formal commencement may be inserted before each of the counts into which it is divided.

**Subsection 1 follows section 732(1) of the Criminal Code. Subsections 2 and 3 are derived from section 519(2) of the Code.**

Amendment of information or certificate

**35.**—(1) The court may, at any stage of the proceeding, amend the information or certificate as may be necessary if it appears that the information or certificate,

(*a*) fails to state or states defectively anything that is requisite to charge the offence;

(*b*) does not negative an exception that should be negatived; or

(*c*) is in any way defective in substance or in form.

Idem

(2) The court may, during the trial, amend the information or certificate as may be necessary if the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the trial.

Variances between charge and evidence

(3) A variance between the information or certificate and the evidence taken on the trial is not material with respect to,

(*a*) the time when the offence is alleged to have been committed, if it is proved that the information was laid or certificate issued within the prescribed period of limitation; or

(*b*) the place where the subject-matter of the proceedings is alleged to have arisen, except in an issue as to the jurisdiction of the court.

(4) The court shall, in considering whether or not an amendment should be made, consider, Considerations on amendment

(*a*) the evidence taken on the trial, if any;

(*b*) the circumstances of the case;

(*c*) whether the defendant has been misled or prejudiced in his defence by a variance, error or omission; and

(*d*) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.

(5) Where the information or certificate is amended, the court may make an order under section 57 for the payment of costs resulting from the necessity of amendment. Costs on amendment

(6) The question whether an order to amend an information or certificate should be granted or refused is a question of law. Amendment, question of law

(7) An order to amend an information or certificate shall be endorsed on the information or certificate as part of the record and the trial shall proceed as if the information or certificate had been originally laid as amended. Endorsement of order to amend

Subsections 1-5 are derived from sections 732(3, 4, 5, 6) of the Criminal Code, which are modified to suit the needs of this Act. Subsections 6 and 7 are derived from sections 529(6,7) of the Code. An important change is found in subsection (1), which will permit a court to amend an information before trial. In summary convictions cases, the wording of the Code does not now permit a justice to amend an information he has ruled defective following an objection which has been taken before plea. The thrust of this section taken as a whole is to ensure that the defendant is fully aware of the allegations against him while at the same time ensuring that a minefield of technicalities is not constructed around the drafting of informations, many of which will be prepared by private informants.

**36.** The court may, before or during trial, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant. Particulars

This is self-explanatory; section 729(2) of the Criminal Code is followed.

Joinder of counts or defendants

**37.**—(1) The court may, before trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried together or that persons who are charged separately be tried together.

Separate trials

(2) The court may, before or during the trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried separately or that persons who are charged jointly or being tried together be tried separately.

Subsection 1 expands the present joinder provision by permitting separate informations to be tried together. The current practice is to hear the evidence on one information, then deem it to apply to another with the consent of the parties. This section recognizes and simplifies this practice. (See section 520 of the Criminal Code). Subsection 2 establishes a broad power to grant severences.

Issuance of subpoena

**38.**—(1) Where a justice is satisfied that a person is able to give material evidence in a proceeding under this Act, the justice may issue a subpoena requiring the person to attend to give evidence and bring with him any writings or things referred to in the subpoena.

Service

(2) A subpoena shall be served and the service shall be proved in the same manner as a summons under section 27.

Attendance

(3) A person who is served with a subpoena shall attend at the time and place stated in the subpoena to give evidence and, if required by the subpoena, shall bring with him any writing or other thing that he has in his possession or under his control relating to the subject-matter of the proceedings.

Remaining in attendance

(4) A person who is served with a subpoena shall remain in attendance during the hearing and the hearing as resumed after adjournment from time to time unless he is excused from attendance by the presiding justice.

Subsection (1) combines sections 626(1) and 628(1) of the Criminal Code, adding the power to compel the production of "things" which are not writings. This is intended to allow innocent third parties to continue to use items required for a trial right up to the time of trial. It replaces the present law which often requires the police to seize and retain articles other than writings weeks or months before a trial is held. Subsection 2 is derived from section 629 of the Code, while subsections 3 and 4 expand upon the provisions of section 628(2).

**39.**—(1) Where a judge is satisfied upon evidence under oath, that a person is able to give material evidence that is necessary in a proceeding under this Act and, Arrest of witness

(*a*) will not attend if a subpoena is served; or

(*b*) attempts to serve a subpoena have been made and have failed because he is evading service,

the judge may issue a warrant in the prescribed form for the arrest of the person.

(2) Where a person who has been served with a subpoena to attend to give evidence in a proceeding does not attend or remain in attendance, the court may, if it is established, Idem

(*a*) that the subpoena has been served; and

(*b*) that the person is able to give material evidence that is necessary,

issue or cause to be issued a warrant in the prescribed form for the arrest of the person.

(3) The police officer who arrests a person under a warrant issued under subsection 1 or 2 shall immediately take the person before a justice. Bringing before justice

(4) Unless the justice is satisfied that it is necessary to detain a person in custody to ensure his attendance to give evidence, the justice shall order the person released upon condition that he enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his attendance. Release on recognizance

(5) Where the person is not released pursuant to an order under subsection 4, the justice who made the order shall cause the person to be brought before a judge within two days of the decision of the justice. Bringing before judge

(6) Where the judge is satisfied that it is necessary to detain the person in custody to ensure his attendance to give evidence, the judge may order that the person be detained in custody to testify at the trial or to have his evidence taken by a commissioner under an order made under subsection 11. Detention

(7) Where the judge does not make an order under subsection 6, he shall order that the person be released upon condition that he enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his attendance. Release on recognizance

Maximum imprisonment

(8) A person who is ordered to be detained in custody under subsection 6 or is not released in fact under subsection 7 shall not be detained in custody for a period longer than ten days.

Release when no longer required

(9) A judge, or the justice presiding at a trial, may at any time order the release of a person in custody under this section where he is satisfied that the detention is no longer justified.

Arrest on breach of recognizance

(10) Where a person who is bound by a recognizance to attend to give evidence in any proceeding does not attend or remain in attendance, the court before which the person is bound to attend may issue a warrant in the prescribed form for the arrest of that person and,

(*a*) where he is brought directly before the court, subsections 6 and 7 apply; and

(*b*) where he is not brought directly before the court, subsections 3 to 7 apply.

Commission evidence of witness in custody

(11) A judge or the justice presiding at the trial may order that the evidence of a person held in custody under this section be taken by a commissioner under section 42, which applies thereto in the same manner as to a witness who is unable to attend by reason of illness.

This section recognizes that a court may in appropriate cases compel the attendance of a witness at a trial by authorizing the arrest and detention of that person. However, taking into account the relatively less serious nature of provincial offences, numerous safeguards are added to the procedure now in force in Ontario through adoption of the Criminal Code's provisions. Subsection 1 modifies section 626(2) by requiring that the justice hear evidence under oath before issuing a warrant. Subsections 3 to 6 ensure that no one is detained under this section unless absolutely necessary, and that only a provincial Judge may order detention.

Even where detention is ordered, subsection 8 ensures that the infringement on the liberty of the subject is minimized by limiting the total period of detention to ten days. If release is ordered but the person cannot meet the terms (for example, can obtain only one of two required sureties) the total period of actual detention cannot exceed ten days. Within this time the witness's evidence must either be heard at trial or taken by a commissioner for use at a subsequent trial (see subsection 11). These provisions greatly relax the periods of detention now permitted by the Criminal Code in section 635.

No power similar to section 472 of the Criminal Code is granted in this Act to imprison a witness who will not testify. The contempt powers set out in The Provincial Courts Amendment Act, 1978 are considered to be sufficient to deal with this situation if it arises.

**40.**—(1) Where a person whose attendance is required in a court to stand trial or to give evidence is confined in a prison, and a judge is satisfied that his attendance is necessary to satisfy the ends of justice, the judge may order in writing that the person be brought before the court before which his attendance is required, from day to day, as may be necessary. Order for person in a prison to attend

(2) An order under subsection 1 is sufficient authority for the keeper of the prison to deliver up the prisoner and for a police officer or other person named in the order to convey the prisoner. Idem

(3) An order made under subsection 1 shall direct the manner in which the person shall be kept in custody and returned to the prison from which he is brought. Idem

This is self-explanatory.

**41.** Every person who, being required by law to attend or remain in attendance at a hearing, fails without lawful excuse to attend or remain in attendance accordingly is guilty of an offence and on conviction is liable to a fine of not more than $1,000, or to imprisonment for a term of not more than thirty days, or to both. Penalty for failure to attend

This replaces the summary contempt finding under section 636 of the Criminal Code with an offence which must be tried like any other.

**42.**—(1) Upon the application of the defendant or prosecutor, a judge or, during trial, the court may by order appoint a commissioner to take the evidence of a witness who is out of Ontario or is not likely to be able to attend the trial by reason of illness or physical disability or for some other good and sufficient cause. Order for evidence by commission

(2) Evidence taken by a commissioner appointed under subsection 1 may be read in evidence in the proceeding if, Admission of commission evidence

(*a*) it is proved by oral evidence or by affidavit that the witness is unable to attend for a reason set out in subsection 1;

(*b*) the transcript of the evidence is signed by the commissioner by or before whom it purports to have been taken; and

(*c*) it is proved to the satisfaction of the court that reasonable notice of the time and place for taking the evidence was given to the other party, and the party had full opportunity to cross-examine the witness.

Attendance of accused

(3) An order under subsection 1 may make provision to enable the defendant to be present or represented by counsel or agent when the evidence is taken, but failure of the defendant to be present or to be represented by counsel or agent in accordance with the order does not prevent the reading of the evidence in the proceedings if the evidence has otherwise been taken in accordance with the order and with this section.

Application of rules in civil cases

(4) Except as otherwise provided by this section or by the rules, the practice and procedure in connection with the appointment of commissioners under this section, the taking of evidence by commissioners, the certifying and return thereof, and the use of the evidence in the proceedings shall, as far as possible, be the same as those that govern like matters in civil proceedings in the Supreme Court.

**This is adopted from sections 637-42 of the Criminal Code; the application to a witness being detained (section 39(1)) is new.**

Trial of issue as to capacity to conduct defence

**43.**—(1) Where at any time before a defendant is sentenced a court has reason to believe, based on,

(*a*) the evidence of a legally qualified medical practitioner or, with the consent of the parties, a written report of a legally qualified medical practitioner; or

(*b*) the conduct of the defendant in the courtroom,

that the defendant suffers from mental disorder, the court shall direct the trial of the issue as to whether the defendant is, because of mental disorder, unable to conduct his defence.

Idem. finding of incapacity

(2) The trial of the issue shall be presided over by a judge and where he finds that the accused is, because of mental disorder, unable to conduct his defence, he shall order that further proceeding on the charge be suspended.

Application for rehearing as to capacity

(3) At any time within one year after an order is made under subsection 2, either party may, upon seven days notice to the other, apply to a judge to rehear the trial of the issue and where upon the rehearing the judge finds that the defendant is able to conduct his defence, he may order that the suspended proceeding be continued.

(4) For the purposes of the trial of an issue under subsection 1 or a hearing or rehearing under subsection 2 or 3, the court or judge may order the defendant to attend at such place or before such person and at or within such time as are specified in the order and submit to an examination for the purpose of determining whether the defendant is, because of mental disorder, unable to conduct his defence. Order for examination

(5) Where the defendant fails or refuses to comply with an order under subsection 4 without reasonable excuse or where the person conducting the examination satisfies the judge that it is necessary to do so, a judge may by warrant direct that the defendant be taken into such custody as is necessary for the purpose of the examination and, where it is necessary to detain the defendant in a place, the place shall be, where practicable, a psychiatric facility. Idem

(6) Where an order is made under subsection 2 and one year has elapsed and no further order is made under subsection 3, no further proceeding shall be taken in respect of the charge or any other charge arising out of the same circumstance. Limitation on suspension of proceeding

This modifies the present law in force in Ontario (sections 738(5) - (8)) in a number of ways designed to reduce interference with the liberty of the subject. Given the nature of provincial offences, it is felt that any question concerning the defendant's mental health is relevant only to his ability to conduct his defence. Mental disorder rather than mental illness and insanity becomes the operative test, since it is a broader concept with which psychiatrists are more comfortable.

The issue of whether a person can conduct his or her defence may be determined only by a Judge. If it is decided that the defendant cannot conduct his or her defence because of a mental disorder, proceedings are placed in abeyance, subject to the right of the parties to continue them if the defendant's mental state improves. If nothing is done for a period of one year, the charge against the defendant is terminated; neither it nor any other charge arising out of the same circumstances can be proceeded with.

Under this provision, the defendant cannot be remanded for a 30 or 60 day period of observation, but rather may only be ordered to attend for an examination. As an examination to determine fitness will generally take less than one-half day, the infringement on the defendant's liberty will be minimal. Only when a defendant fails without reasonable excuse to attend for his examination, or when the person who examines the defendant when he does attend is able to satisfy the judge of its necessity, can the defendant be detained for the examination. Even then the detention will only be for the period of time necessary to complete the examination.

Taking of plea

**44.**—(1) After being informed of the substance of the information or certificate, the defendant shall be asked whether he pleads guilty or not guilty of the offence charged therein.

Conviction on plea of guilty

(2) Where the defendant pleads guilty, the court may accept the plea and convict him.

Refusal to plead

(3) Where the defendant refuses to plead or does not answer directly, the court shall enter a plea of not guilty.

Plea of guilty to another offence

(4) Where the defendant pleads not guilty of the offence charged but guilty of an offence that has not been charged, the court may, with the consent of the prosecutor, accept such plea of guilty and accordingly amend the information or substitute the offence to which the defendant pleads guilty.

**Subsections 1-3 are self-explanatory. Sub-section 4 is designed to permit a defendant to plead guilty to a lesser offence than the one charged whether or not that other offence is in law an included offence. The wording employed deviates from the wording of section 534 of the Criminal Code to ensure that the judicial limitations placed on that section are not applied to this Act.**

Trial on plea of not guilty

**45.** (1) Where the defendant pleads not guilty, the court shall hold the trial.

Right to defend

(2) The defendant is entitled to make his full answer and defence.

Right to examine witnesses

(3) The prosecutor or defendant, as the case may be, may examine and cross-examine witnesses.

Agreed facts

(4) The court may accept and act upon any facts agreed upon by the defendant and prosecutor without proof or evidence.

Defendant not compellable R.S.O. 1970. c. 151

(5) Notwithstanding section 8 of *The Evidence Act*, the defendant is not a compellable witness for the prosecution.

**Subsections 1-4 are self-explanatory. Subsection 4 removes the present anomoly of the prosecutor having the theoretical right to call the defendant as a witness against himself.**

Evidence taken on another charge

**46.**—(1) The court may receive and consider evidence taken before the same justice on a different charge against the same defendant, with the consent of the parties.

(2) Where a certificate as to the content of an official record is, by any Act, made admissible in evidence as *prima facie* proof, the court may, for the purpose of deciding whether the defendant is the person referred to in the certificate, receive and base its decision upon information it considers credible or trustworthy in the circumstances of each case. Certificate as evidence

(3) The burden of proving that an authorization, exception, exemption or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the authorization, exception, exemption or qualification does not operate in favour of the defendant, whether or not it is set out in the information. Burden of proving exception, etc.

Subsection 1 will permit a court, which has acquitted the accused on a charge, for example, of dangerous driving under the Criminal Code, to consider evidence, if the defendant and prosecutor consent, on a charge of careless driving under The Highway Traffic Act.

The purpose is to prevent technical rules from blocking expedition where both parties are willing to consent to the expeditious procedure.

Subsection 2 is intended to assist the court in determining whether a person named in a document is the same person as the defendant. The test employed, taken from the Bail Reform Act, is now found in section 457.3(1)(e) of the Criminal Code.

**47.**—(1) The court may order that an exhibit be kept in such custody and place as, in the opinion of the court, is appropriate for its preservation. Exhibits

(2) Where any thing is filed as an exhibit in a proceeding, the clerk may release the exhibit upon the consent of the parties at any time after the trial or, in the absence of consent, may return the exhibit to the party filing it after the disposition of any appeal in the proceeding or, where an appeal is not taken, after the expiration of the time for appeal. Release of exhibits

This gives the court power to keep exhibits outside of the court premises. It also reflects the intention to prevent the provincial offences court from having to determine property matters. The intent is that in most cases the court will simply return the parties to the status quo when the exhibit is no longer needed for court purposes.

Adjournments

**48.**—(1) The court may, from time to time, adjourn a trial or hearing but, where the defendant is in custody, an adjournment shall not be for a period longer than eight days without the consent of the defendant.

Early resumption

(2) A trial or hearing that is adjourned for a period may be resumed before the expiration of the period with the consent of the defendant and the prosecutor.

This is self-explanatory.

Appearance by defendant

**49.**—(1) A defendant may appear and act personally or by counsel or agent.

Appearance by corporation

(2) A defendant that is a corporation shall appear and act by counsel or agent.

Exclusion of agents

(3) The court may bar any person from appearing as an agent who is not a barrister and solicitor entitled to practise in Ontario if the court finds that the person is not competent properly to represent or advise the person for whom he appears as agent or does not understand and comply with the duties and responsibilities of an agent.

Subsection (1) adds the word "act" to section 734(2) of the Criminal Code, thus making it clear that a defendant who attends court with his agent may act through that agent. The clarification was made necessary by certain judicial decisions restricting the right of agents to act for defendants who were present in court.

Subsection 2 is derived from section 735(3) of the Code.

Subsection 3 makes applicable to provincial offence procedure a provision found in The Statutory Powers Procedures Act (which governs proceedings before administrative tribunals), the Landlord and Tenant Act and the Coroners Act. The provision protects defendants from being taken advantage of by unscrupulous or simply incompetent agents.

Compelling attendance of defendant

**50.** Notwithstanding that a defendant appears by counsel or agent, the court may order the defendant to attend personally, and, where it appears to be necessary to do so, may issue a summons in the prescribed form.

This is derived from section 735(2) of the Criminal Code; it recognizes that in certain cases - for example a careless driving charge where there has been a fatality - the community may have an interest in requiring the defendant to attend court.

**51.**—(1) The court may cause the defendant to be removed and to be kept out of court, Excluding defendant from hearing

(*a*) when he misconducts himself by interrupting the proceedings so that to continue in his presence would not be feasible; or

(*b*) where, during the trial of an issue as to whether the defendant is, because of mental disorder, unable to conduct his defence, the court is satisfied that failure to do so might have an adverse effect on the mental health of the defendant.

(2) The court may exclude the public or any member of the public from a hearing where, in the opinion of the court, it is necessary to do so, Excluding public from hearing

(*a*) for the maintenance of order in the courtroom;

(*b*) to protect the reputation of a minor; or

(*c*) to remove an influence that might affect the testimony of a witness.

(3) Where the court considers it necessary to do so to protect the reputation of a minor, the court may make an order prohibiting the publication or broadcast of the identity of the minor or of the evidence or any part of the evidence taken at the hearing. Prohibition of publication of evidence

**This is self-explanatory.**

**52.**—(1) Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss the charge or may adjourn the hearing to some other time upon such terms as it considers proper. Failure of prosecutor to appear

(2) Where the prosecutor does not appear at the time and place appointed for the resumption of an adjourned hearing under subsection 1, the court may dismiss the charge. Idem

(3) Where a hearing is adjourned under subsection 1 or a charge is dismissed under subsection 2, the court may make an order under section 57 for the payment of costs. Costs

(4) Where a charge is dismissed under subsection 1 or 2, no further information shall be laid or certificate issued in the same matter, except with the consent of the Attorney General or his agent. Dismissal bar to further proceeding

This is designed to protect defendants from harrassment by private prosecutors. If the prosecutor fails to appear twice the charge will be dismissed; if he or she fails to appear once it may be. Because in exceptional circumstances terminating proceedings may create the greater injustice, a power is given to recommence proceedings if the Attorney-General or his agent consents. These provisions are derived from, but strengthen the protections found in sections 734, and 738(4) of the Criminal Code.

*Ex parte* conviction

**53.**—(1) Where a defendant does not appear at the time and place appointed for a hearing and it is proved that a summons was served, a notice of trial was given under Part I or II, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the defendant does not appear upon the resumption of a hearing that has been adjourned, the court,

(*a*) may proceed *ex parte* to hear and determine the proceedings in the absence of the defendant;

(*b*) may, if it thinks fit, adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the defendant; or

(*c*) may, where the defendant does not appear in response to the summons or warrant on the date to which the hearing is adjourned, proceed under clause *a* or *b*.

Where convicted *ex parte*

(2) Where, the court proceeds under clause *a* of subsection 1, no proceeding arising out of the failure of the defendant to appear at the time and place appointed for the hearing or for the resumption of the hearing shall be instituted or if instituted shall be proceeded with, except with the consent of the Attorney General or his agent.

This is derived from sections 738(3) and 738(3.1) of the Criminal Code. The power to issue a summons to a non-appearing defendant in lieu of the warrant provided for by the Code is again intended to reflect the distinction between provincial and criminal offences. The ex parte trial provision applies to all cases in which a trial is scheduled; thus the defendant who indicates a plea of not guilty and an intention to have a trial on an offence notice or parking offence notice will never be convicted without a hearing.

**54.**—(1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence. Pre-sentence report

(2) Where a report is filed with the court under subsection 1, the clerk of the court shall cause a copy of the report to be provided to the defendant or his counsel or agent and to the prosecutor. Service

**This is self-explanaory. Section 662 of the Criminal Code is modified by permitting a pre-sentence report to be prepared concerning a corporate offender. The financial position of a company has obvious relevance to the question of any fine to be imposed.**

**55.**—(1) Where a defendant is convicted of an offence, the court shall give the prosecutor and the counsel or agent for the defendant an opportunity to make submissions as to sentence and, where the defendant has no counsel or agent, the court shall ask him if he has anything to say before sentence is passed upon him. Submissions as to sentence

(2) The omission to comply with subsection 1 does not affect the validity of the proceeding. Omission to comply

(3) Where a defendant is convicted of an offence, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as it considers desirable, including his economic circumstances, but the defendant shall not be compelled to answer. Inquiries by court

(4) A certificate setting out with reasonable particularity the finding of guilt or acquittal or conviction and sentence in Canada of a person signed by, Proof of previous conviction

(*a*) the person who made the adjudication; or

(*b*) the clerk of the court in which the adjudication was made,

is, upon the court being satisfied that the defendant is the person referred to in the certificate, admissible in evidence and is *prima facie* proof of the facts stated therein without proof of the signature or the official character of the person appearing to have signed the certificate.

**Subsections 1 and 2 are derived from section 595 of the Criminal Code; the statutory right of a defendant to have submissions made by counsel or an agent is added to that section.**

Subsection 3 reflects the non-criminal nature of provincial offences by empowering the court to question the defendant for the purpose of determining the appropriate sentence. However, the defendant need not answer. If the court elicits information concerning the economic circumstances of the defendant, or if that evidence is adduced by the defendant, the court will be able to ensure that the fine is not unrealistic in light of the defendant's ability to pay.

Subsection 4 is derived from section 594(1) of the Code. The applicability of section 46(2) of this Act assists the court in deciding whether the record is in fact the record of the defendant where the defendant refuses to state whether or not it is his record.

Provision for minimum penalty

**56.**—(1) No penalty prescribed for an offence is a minimum penalty unless it is specifically declared to be a minimum.

Relief against minimum fine

(2) Notwithstanding that the provision that creates the penalty for an offence prescribes a minimum fine, where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may suspend the sentence.

Idem, re imprisonment

(3) Where a minimum penalty is prescribed for an offence and the minimum penalty includes imprisonment, the court may, notwithstanding the prescribed penalty, impose a fine of not more than $2,000 in lieu of imprisonment.

This section recognizes that while minimum fines are a valid form of legislative direction to the courts, any absolute provision must create hardship in extraordinary cases. It therefore gives the courts a tightly restricted power to relieve against minimum fines. Subsection 3 is derived from section 12 of The Summary Convictions Act; subsection 1 is derived from section 645(2) of the Criminal Code, while subsection 2 is new.

Costs payable by defendant and private prosecutor:

**57.**—(1) Subject to subsection 2, the court may order the defendant or the prosecutor to pay to the other costs in an amount of not more than the fees and expenses reasonably incurred by or on behalf of witnesses, but, where the proceeding is commenced by means of a certificate, such amount shall not exceed $100.

Crown

(2) An order for costs shall not be made against a prosecutor acting on behalf of the Crown.

Costs collectable as a fine

(3) Costs ordered to be paid under this section shall be deemed to be a fine for the purpose of enforcing payment.

This section is designed to limit the dollar amount of costs which can be awarded to prevent litigants from being discouraged from bringing legitimate charges or mounting legitimate defences. The restriction in subsection 2 reflects the fact that public prosecutors deal with charges laid by other persons, whereas the private prosecutor is the person who has instituted proceedings.

General penalty

**58.**—(1) Except where otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than six months, or to both.

Amendment of subs. 1

(2) Subsection 1 is amended by striking out "or to imprisonment for a term of not more than six months, or to both" in the third and fourth lines.

Effective date of amendment

(3) Subsection 2 does not come into force until the 1st day of July, 1980.

Where a statute is silent as to penalty, the maximum fine is increased from $500 to take account of changed economic circumstances. The elimination of jail as a generally-available penalty reflects the fact that the nature of most provincial offences makes jail inappropriate as punishment. Where the nature of a specific offence makes it appropriate, it must be set out in the statute creating the offence, thus giving the Legislature an opportunity to debate its appropriateness.

The elimination of imprisonment as a general residual sentencing power will not take effect until July 1, 1980, thus giving the legislature an opportunity to amend existing statutes to incorporate imprisonment where it is necessary.

Minute of conviction

**59.** Where a court convicts a defendant or dismisses a charge, a minute of the dismissal or conviction and sentence shall be made by the court, and, upon request by the defendant or the prosecutor or by the Attorney General or his agent, the court shall cause a copy thereof certified by the clerk of the court to be delivered to the person making the request.

This is based upon sections 741(1) and 743(1) of the Criminal Code.

Time when imprisonment starts

**60.**—(1) The term of imprisonment imposed by sentence shall, unless otherwise directed in the sentence, commence on the day on which the convicted person is taken into custody thereunder, but no time during which the convicted person is imprisoned or out on bail before sentence shall be reckoned as part of the term of imprisonment to which he is sentenced.

Idem

(2) Where the court imposes imprisonment, the court may order custody to commence on a day not later than thirty days after the day of sentencing.

Subsection 2 modifies section 23 of The Summary Convictions Act, from which subsection 1 is derived, by permitting the court to postpone the commencement of sentence. This is intended to permit the court to give the defendant a chance to organize personal and family affairs before commencing a jail term.

Sentences consecutive

**61.** Where a person is subject to more than one term of imprisonment at the same time, the terms shall be served consecutively except in so far as the court has ordered a term to be served concurrently with any other term of imprisonment.

This reverses the present law, which permits scofflaws to erase hundreds of dollars of parking fines by serving one sentence of two days. The purpose of the reversal is to encourage the payment of fines instead of allowing these persons to avoid payment by serving short jail terms. The result of the present situation is to deprive the community of the fine revenue while causing the community to incur the substantial costs of incarcerating the offender.

Authority of warrant

**62.**—(1) A warrant of committal is sufficient authority,

(*a*) for the conveyance of the prisoner in the custody of a police officer or other person named in the warrant for the purpose of committal under the warrant; and

(*b*) for the reception and detention of the prisoner by keepers of prisons in accordance with the terms of the warrant.

Prisoner subject to rules of institution

(2) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced.

This is self-explanatory.

When fine due

**63.**—(1) A fine becomes due and payable fifteen days after its imposition.

Extension of time for payment of a fine

(2) Where the court imposes a fine, the court shall ask the defendant if he wishes an extension of the time for payment of the fine.

(3) Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer. Inquiries

(4) Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise. Granting of extension

(5) Where a fine is imposed in the absence of the defendant, the clerk of the court shall give the defendant notice of the fine and its due date and of his right to apply for an extension of the time for payment under subsection 6. Notice where convicted *in absentia*

(6) The defendant may, at any time by application in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the application shall be determined by a justice and the justice has the same powers in respect of the application as the court has under subsections 3 and 4. Further application for extension

Subsection 1 gives all offenders a fifteen day period to pay their fines, again being designed to ensure that payment of the fine is made whenever possible.

Subsections 2 to 4 empower and strongly direct the sentencing justice to extend time for payment in all but extreme cases. The provision for periodic payment in subsection 4 furthers this objective.

Subsection 5 ensures that the defendant who is convicted at a trial held in his absence is notified of his obligations and rights.

Subsection 6 allows a defendant, whether or not he has been granted an extension of time by the sentencing justice, to apply at any time to the court office for an extension of time for payment, including an extension by provision for periodic payments. The application will be in writing in a form provided at the court office. The applicant will not attend before the justice unless the justice, after reviewing the written submission, decides that an interview is essential. On so deciding he may then ask the defendant to attend at the office, although he will have no power to compel him to do so. In appropriate cases, the justice can grant short extensions of time, thus requiring an offender to frequently establish his inability to pay. There is no limit on the number of applications which can be brought, nor is there any restriction on bringing an application after a warrant of committal for default has been issued. The object is to have the offender honestly endeavour to recognize and satisfy his debt to the community, rather than employ an inappropritely harsh and expensive punishment on someone who cannot pay a fine when it falls due.

Civil enforcement of fines

**64.**—(1) When the payment of a fine is in default, the clerk of the court may complete a certificate in the prescribed form as to the imposition of the fine and the amount remaining unpaid and file the certificate in a court of competent jurisdiction and upon filing, the certificate shall be deemed to be an order or judgment of that court for the purposes of enforcement.

Limitation

(2) A certificate shall not be filed under subsection 1 after two years after the default in respect of which it is issued.

Certificate of discharge

(3) Where a certificate has been filed under subsection 1 and the fine is fully paid, the clerk shall file a certificate of payment upon which the certificate of default is discharged.

**This follows from the power created in section 65(2). It permits a defaulted fine to be collected in the same manner as any civil judgment debt. Thus in appropriate cases assets of a defaulting offender could be seized and sold to satisfy the fine.**

Default

**65.**—(1) The payment of a fine is in default when any part of the fine is due and unpaid for fifteen days or more.

Order on default

(2) Where a justice is satisfied that payment of a fine is in default, the justice,

(*a*) shall order that any permit, licence, registration or privilege in respect of which a suspension is authorized by or under any Act for non-payment of the fine be suspended, not renewed or not issued; and

(*b*) may direct the clerk of the court to proceed with civil enforcement under section 64.

Imprisonment for non-payment of fine

(3) A justice may issue a warrant in the prescribed form for the committal of the defendant where,

(*a*) an order or direction under subsection 2 has not resulted in payment within a time that is reasonable in the circumstances;

(*b*) all other reasonable methods of collecting the fine have been tried and failed or, in the opinion of the justice, would not likely result in payment within a reasonable time in the circumstances; and

(*c*) the defendant has been given fifteen days notice of the intent to issue a warrant and has had an opportunity to be heard.

Provision on conviction for imprisonment in default

(4) In exceptional circumstances where, in the opinion of the court imposing the fine, to proceed under subsection 3 would defeat the ends of justice, the court may,

(*a*) order that no warrant of committal be issued under subsection 3; or

(*b*) order imprisonment in default of payment of the fine and that no extension of time for payment be granted.

Term of imprisonment

(5) Imprisonment under a warrant issued under subsection 3 or 4 shall be for three days, plus one day for each $25 or part thereof that is in default, subject to a maximum period of,

(*a*) ninety days; or

(*b*) half of the maximum imprisonment, if any, provided for the offence,

whichever is the greater.

Effect of payments

(6) Any payment made after a warrant is issued under subsection 3 or 4 shall reduce the term by the number of days that is in the same proportion to the number of days in the term as the amount paid bears to the total fine and no amount offered in part payment of a fine shall be accepted unless it is sufficient to secure reduction of sentence of one day, or a multiple thereof.

**This is discussed at pages 14-17.**

Suspension of fine on conditions

**66.** Where an Act provides that a fine may be suspended subject to the performance of a condition,

(*a*) the period of suspension shall be fixed by the court and shall be for not more than one year;

(*b*) the court shall provide in its order of suspension the method of proving the performance of the condition;

(*c*) the suspension is in addition to and not in lieu of any other power of the court in respect of the fine; and

(*d*) the fine is not in default until fifteen days have elapsed after notice that the period of suspension has expired is given to the defendant.

This provision is intended to empower the expansion of a highly successful concept which was pioneered at the North York Traffic Tribunal. It is felt that in certain cases the community is better off if the offender, rather than paying a monetary penalty, learns not to commit the offence again. Thus a driving offender could have the option of attending a driver safety course instead of paying a fine; hunters could attend hunter safety courses.

Because of the varying nature of the conditions which could be imposed in lieu of a fine, and the need to ensure that facilities are in place to cope with persons sentenced under this section, the Act is enabling, leaving it for individual ministries to presecribe the appropriate details. Once a ministry does so, this section will empower justices to impose the conditions where appropriate, with this section setting out the basic procedural guidelines.

Probation order

**67.**—(1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may, having regard to the age, character and background of the defendant, the nature of the offence and the circumstances surrounding its commission,

(*a*) suspend the passing of sentence and direct that the defendant comply with the conditions prescribed in a probation order;

(*b*) in addition to fining the defendant or sentencing him to imprisonment, whether in default of payment of a fine or otherwise, direct that the defendant comply with the conditions prescribed in a probation order; or

(*c*) where it imposes a sentence of imprisonment on the defendant, whether in default of payment of a fine or otherwise, that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the defendant, at all times when he is not in confinement pursuant to such order, comply with the conditions prescribed in a probation order.

Statutory conditions of order

(2) A probation order shall be deemed to contain the conditions that,

(*a*) the defendant not commit the same or any related or similar offence, or any offence under a statute of Canada or Ontario or any other province of Canada that is punishable by imprisonment;

(*b*) the defendant report to the court as and when required; and

(*c*) the defendant notify the court of any change in his address.

Conditions imposed by court

(3) In addition to the conditions set out in subsection 2, the court may prescribe the following conditions in a probation order.

(*a*) that the defendant satisfy any compensation or restitution that is required or authorized by an Act;

(*b*) with the consent of the defendant and where the conviction is of an offence that is punishable by imprisonment that the defendant perform a community service as set out in the order;

(*c*) where the conviction is of an offence punishable by imprisonment, such other conditions relating to the circumstances of the offence and of the defendant that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to the rehabilitation of the defendant; or

(*d*) where considered necessary for the purpose of implementing the conditions of the probation order, that the defendant report to a responsible person designated by the court and, in addition, where the circumstances warrant it, that the defendant be under the supervision of the person to whom he is required to report.

Form of order

(4) A probation order shall be in the prescribed form and the court that makes the order shall specify therein the period for which it is to remain in force, which shall not be for more than three years from the date when the order takes effect.

Notice of order

(5) Where the court makes a probation order, it shall cause a copy of the order and a copy of section 70 to be given to the defendant.

Regulations for community service orders

(6) The Lieutenant Governor in Council may make regulations respecting community service orders, including their terms and conditions.

Subsections 1 and 2 are self-explanatory. Subsection 3(a) is another enabling section which recognizes that the great diversity of provincial offences precludes the creation of restitution procedures and limitations applicable to all. Therefore it is left to individual ministries to make restitution applicable to offences for which they consider it appropriate. Since most provincial offences differ from criminal law in that there is not often an identified individual who is the victim, restitution will not have the same significance as it can in criminal proceedings.

The remainder of the section, with exception of subsections 3(b) and 6 is self-explanatory. Those provisions again recognize that a basic difference between criminal and provincial offences is that very few persons convicted of the latter are incarcerated. If follows that community service, which is generally a substitute for incarceration, does not have the same relevance as it does in criminal proceedings. Because, however, it may have a role to play in the more serious provincial offences, regulations covering the myriad of details essential for a community service program will follow the enactment of this Act.

When order comes into force

**68.**—(1) A probation order comes into force,

(*a*) on the date on which the order is made; or

(*b*) where the defendant is sentenced to imprisonment other than a sentence to be served intermittently, upon the expiration of that sentence.

Continuation in force

(2) Subject to section 70, where a defendant who is bound by a probation order is convicted of an offence or is imprisoned in default of payment of a fine, the order continues in force except in so far as the sentence or imprisonment renders it impossible for the defendant to comply for the time being with the order.

This is self-explanatory.

Variation of probation order

**69.** The court may, at any time upon the application of the defendant or prosecutor with notice to the other, after a hearing or, with the consent of the parties, without a hearing,

(*a*) make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances;

(*b*) relieve the defendant, either absolutely or upon such terms or for such period as the court considers desirable, of compliance with any condition described in any of the clauses in subsection 3 of section 67 that is prescribed in the order; or

(*c*) terminate the order or decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes or adds to the conditions prescribed in the order, inform the defendant of its action and give him a copy of the order so endorsed.

This is self-explanatory.

Breach of probation order

**70.** Where a defendant who is bound by a probation order is convicted of an offence constituting a breach of condition of the order and,

(*a*) the time within which he may appeal or apply for leave to appeal against that conviction has expired and he has not taken an appeal or applied for leave to appeal;

(*b*) he has taken an appeal or applied for leave to appeal against the conviction and the appeal or application for leave has been dismissed or abandoned; or

(*c*) he has given written notice to the court that convicted him that he elects not to appeal,

or where the defendant otherwise wilfully fails or refuses to comply with the order, he is guilty of an offence and upon conviction the court may,

(*d*) impose a fine of not more than $1,000 or imprisonment for a term of not more than thirty days, or both, and in lieu of or in addition to the penalty, continue the probation order with such changes or additions and for such extended term, not exceeding an additional year, as the court considers reasonable; or

(*e*) where the justice presiding is the justice who made the original order, in lieu of imposing the penalty under clause *d*, revoke the probation order and impose the sentence that was suspended upon the making of the probation order.

This secion forces the Crown to elect between charging the offender with the offence of breaching probation or having him sentenced for the original offence. To achieve the second alternative, the Crown must take the offender before the justice who originally sentenced him.

## PART V

### GENERAL PROVISIONS

Limitation

**71.**—(1) Proceedings shall not be commenced after the expiration of any limitation period prescribed for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

Extension

(2) A limitation period may be extended by a justice with the consent of the defendant.

Subsection 1 is derived from section 721(2) of the Criminal Code. Subsection 2 facilitates the newly created right of a defendant to plead guilty to a lesser offence than the one charged. See section 44(4).

Parties to offence

**72.**—(1) Every person is a party to an offence who,

(*a*) actually commits it,

(*b*) does or omits to do anything for the purpose of aiding any person to commit it; or

(*c*) abets any person in committing it.

Common purpose

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to the offence.

This is derived from section 21 of the Criminal Code.

**73.**—(1) Where a person counsels or procures another person to be a party to an offence and that other person is afterwards a party to the offence, the person who counselled or procured is a party to the offence, notwithstanding that the offence was committed in a way different from that which was counselled or procured. Counselling

(2) Every person who counsels or procures another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling or procuring that the person who counselled or procured knew or ought to have known was likely to be committed in consequence of the counselling or procuring. Idem

This is derived from section 22 of the Criminal Code.

**74.**—(1) In determining the age of a person for the purposes of a proceeding under this Act or for the purposes of an offence, the person shall be deemed to be of the age that corresponds to the number of anniversaries of his birthday that are fully completed. Computation of age

(2) In the absence of other evidence, or by way of corroboration of other evidence, a justice may infer the age of a person from his appearance. Idem

Subsection 1 is derived from section 3(1) of the Criminal Code. Subsection 2 is derived from section 585(2) of the Code.

**75.** Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of offences, except in so far as they are altered by or inconsistent with this or any other Act. Common law defences

This is derived from section 7(3) of the Criminal Code.

**76.** Ignorance of the law by a person who commits an offence is not an excuse for committing the offence. Ignorance of the law

This is derived from section 19 of the Criminal Code.

**77.** A defendant may act by his counsel or agent. Counsel or agent

This ensures that defendants may at all stages of the proceedings act through counsel or an agent.

Recording of evidence

**78.**—(1) Proceedings in which evidence is taken shall be recorded.

Evidence under oath

(2) Evidence under this Act shall be taken under oath, except as otherwise provided by law.

This is self-explanatory; subsection 2 recognizes the provisions of sections 17 and 18 of The Ontario Evidence Act.

Form of certificate of ownership

**79.** The Lieutenant Governor in Council may make regulations prescribing the form of certificate as to ownership of a motor vehicle given by the Registrar under subsection 2 of section 150 of *The Highway Traffic Act* for the purpose of proceedings under this Act.

R.S.O. 1970, c. 202

This is designed to ensure that proof of ownership of motor vehicles is presented to the court in an inexpensive and legally admissible form.

Interpreters

**80.**—(1) A justice may authorize a person to act as interpreter in a proceeding before him where the person swears the prescribed oath and, in the opinion of the justice, is competent.

Idem

(2) A judge may authorize a person to act as interpreter in proceedings under this Act where he swears the prescribed oath and, in the opinion of the judge is competent and likely to be readily available.

This is self-explanatory; subsection 2 is designed to permit an interpreter to be sworn generally as an interpreter by a judge in lieu of being sworn each time he or she appears in court.

Extension of time

**81.** Any time prescribed by this Act or the regulations made thereunder or by the rules of the court for doing any thing other than commencing proceedings may be extended by the court in which the proceeding is conducted, whether or not the prescribed time has expired.

This is self-explanatory.

Penalty for false statements

**82.** Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence and on conviction is liable to a fine of not more than $1,000.

This is self-explanatory; it will have particular relevance to persons making factual assertions in writing as defences to charges in proceedings commenced by offence notices. See section 6.

**83.**—(1) Except as otherwise provided by this Act or the rules of the court, any notice or document required or authorized to be given or delivered under this Act or the rules of the court is sufficiently given or delivered if delivered personally or by mail. Delivery

(2) Where a notice or document that is required or authorized to be given or delivered to a person under this Act is mailed to the person at his last known address appearing on the records of the court in the proceeding, there is a rebuttable presumption that the notice or document is given or delivered to the person. Idem

Subsection 1 puts the onus on a person who is to deliver a document to ensure that it is in fact delivered, whether the mail or another delivery method is utilized. The rebuttable presumption created by subsection 2 applies only where the document is sent to an address appearing on the records of the court in the proceedings then underway. This ensures that it does not apply to any non-current address.

**84.** No civil remedy for an act or omission is suspended or affected for the reason that the act or omission is an offence. Civil remedies preserved

This is derived from section 10 of the Criminal Code.

**85.** Any action authorized or required by this Act is not invalid for the reason only that the action was taken on a non-juridical day. Process on holidays

This is derived from section 20 of the Criminal Code.

**86.**—(1) The validity of any proceeding is not affected by, Irregularities in form

(*a*) any irregularity or defect in the substance or form of the summons, warrant, offence notice, parking infraction notice, undertaking to appear or recognizance; or

(*b*) any variance between the charge set out in the summons, warrant, parking infraction notice, offence notice undertaking to appear or recognizance and the charge set out in the information or certificate.

(2) Where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned in subsection 1, the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 57 for the payment of costs. Adjournment to meet irregularities

This recognizes that the foundation documents for proceedings under this Act are the information, offence notice, and parking infraction notice. The provision is derived from sections 473 and 440.1(2) of the Criminal Code.

## PART VI

### APPEALS AND REVIEW

Interpretation

**87.** In this Part,

(*a*) "county court" means a county or district court having jurisdiction in an appeal under section 88;

(*b*) "county judge" means a judge of a county or district court having jurisdiction in an appeal under section 88;

(*c*) "rules" means the rules made under section 117;

(*d*) "sentence" includes any order or disposition consequent upon a conviction and an order as to costs.

### APPEALS UNDER PART III

Appeal to county or district court

**88.**—(1) Where a proceeding is commenced by information under Part III, the defendant or the prosecutor or the Attorney General by way of intervention may appeal to the county or district court of the county or district in which the adjudication was made and the appeal may be from a conviction or dismissal or from a finding as to ability, because of mental disorder, to conduct a defence or as to sentence.

Notice of appeal

(2) The appellant shall give notice of appeal in such manner and within such period as is provided by the rules.

Custody pending appeal

**89.** A defendant who appeals shall, if he is in custody, remain in custody, but a judge of the county court may order his release upon any of the conditions set out in subsection 2 of section 128.

Recognizance of appellant

**90.**—(1) An appellant other than the Attorney General shall, forthwith after filing the notice of appeal in accordance with the rules, appear before a justice and the justice may, after giving the appellant and respondent a reasonable opportunity to be heard, order that the appellant enter into a recognizance to appear on the appeal, personally or by counsel, and the recognizance may be in such amount with or without sureties as the justice directs.

(2) Where a justice makes an order under subsection 1, either the appellant or respondent may, before or at any time during the hearing of the appeal, apply to the county court for a review of the order and the county court shall, Review

(*a*) dismiss the application; or

(*b*) allow the application, vacate the order made by the justice and make the order that in the opinion of the county court ought to have been made.

**91.**—(1) Where an appellant is in custody pending the hearing of the appeal and the hearing of the appeal has not commenced within thirty days from the day on which notice of the appeal was given, the person having custody of the appellant shall apply to a county judge to fix a date for the hearing of the appeal. Fixing of date where appellant in custody

(2) Upon receiving an application under subsection 1, the county judge shall, after giving the prosecutor a reasonable opportunity to be heard, fix a date for the hearing of the appeal and give such directions as he thinks appropriate for expediting the hearing of the appeal. Idem

**92.** A person does not waive his right of appeal by reason only that he pays the fine or complies with any order imposed upon conviction. Payment of fine not waiver

**93.** Where a notice of appeal has been filed, the clerk of the county court shall notify the clerk of the provincial offences court appealed from of the appeal and, upon receipt of the notification, the clerk of the provincial offences court shall transmit the order appealed from and transmit or transfer custody of all other material in his possession or control relevant to the proceedings to the clerk of the county court to be kept with the records of the county court. Transmittal of material

**94.**—(1) The county court may, where it considers it to be in the interests of justice, Powers of county court

(*a*) order the production of any writing, exhibit or other thing relevant to the appeal;

(*b*) order any witness who would have been a compellable witness at the trial, whether or not he was called at the trial,

(i) to attend and be examined before the court, or

(ii) to be examined in the manner provided by the rules before a judge of the court, or before any officer of the court or justice of the peace or other person appointed by the court for the purpose;

(*c*) admit, as evidence, an examination that is taken under subclause ii of clause *b*;

(*d*) receive the evidence, if tendered, of any witness;

(*e*) order that any question arising on the appeal that,

(i) involves prolonged examination of writings or accounts, or scientific investigation, and

(ii) cannot in the opinion of the court conveniently be inquired into before the court,

be referred for inquiry and report, in the manner provided by the rules, to a special commissioner appointed by the court; and

(*f*) act upon the report of a commissioner who is appointed under clause *e* in so far as the court thinks fit to do so.

Right of appellant

(2) In proceedings under this section, the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under clause *e* of subsection 1, are entitled to be present during the inquiry and to adduce evidence and to be heard.

Rights of appellant to appear

**95.**—(1) Subject to subsection 2, an appellant who is in custody is entitled, if he desires, to be present at the hearing of the appeal.

Exceptions

(2) An appellant who is in custody and who is represented by counsel is not entitled to be present, on any proceedings that are preliminary or incidental to an appeal, unless the rules provide that he is entitled to be present or the county court or a judge thereof gives him leave to be present.

Sentencing in absence

(3) The power of a county court to impose sentence may be exercised notwithstanding that the appellant is not present.

**96.** An appellant may present his case on appeal and his argument in writing instead of orally, and the county court shall consider any case or argument so presented. Written argument

**97.**—(1) On the hearing of an appeal against a conviction or against a finding that the appellant is unable, because of mental disorder, to conduct his defence, the county court by order, Powers on appeal against conviction

(*a*) may allow the appeal where it is of the opinion that,

(i) the finding should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or

(iii) on any ground, there was a miscarriage of justice;

(*b*) may dismiss the appeal where,

(i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of an information, was properly convicted on another count or part of the information,

(ii) the appeal is not decided in favour of the appellant on any ground mentioned in clause *a*, or

(iii) notwithstanding that the court is of the opinion that on any ground mentioned in subclause ii of clause *a* the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred; or

(*c*) may set aside the conviction and find the appellant unable, because of mental disorder, to conduct his defence and order a new trial subject to section 43.

(2) Where a county court allows an appeal under clause *a* of subsection 1, it shall quash the conviction and, Idem

(*a*) direct a finding of acquittal to be entered; or

(*b*) order a new trial.

Idem

(3) Where a county court dismisses an appeal under subclause i of clause *b* of subsection 1, it may substitute the finding that in its opinion should have been found and affirm the sentence passed by the trial court or impose a sentence that is warranted in law.

Enforcement

(4) A conviction made by the county court may be enforced,

(*a*) in the same manner as if it had been made by the trial court; or

(*b*) by process of the county court.

Transmission of documents

(5) Where a conviction that has been made or affirmed by a county court is to be enforced by the trial court, the clerk of the county court shall send to the clerk of the trial court the conviction and all writings relating thereto.

Powers on appeal against acquittal

**98.** Where an appeal is from an acquittal, the county court may by order,

(*a*) dismiss the appeal; or

(*b*) allow the appeal, set aside the finding and,

(i) order a new trial, or

(ii) enter a finding of guilt with respect to the offence of which, in its opinion, the appellant should have been found guilty, and pass a sentence that is warranted in law.

Powers on appeal as to capacity to conduct defence

**99.** Where a county court allows an appeal from a finding that the defendant is unable, because of mental disorder, to conduct his defence, it shall order a new trial.

Appeal against sentence

**100.**—(1) Where an appeal is taken against sentence, the county court shall consider the fitness of the sentence appealed from and may, upon such evidence, if any, as it thinks fit to require or receive, by order,

(*a*) dismiss the appeal; or

(*b*) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted,

and, in making any order under clause *b*, the court may take into account any time spent in custody by the defendant as a result of the offence.

Variance of sentence

(2) A judgment of a county court that varies a sentence has the same force and effect as if it were a sentence passed by the trial court.

**101.** Where one sentence is passed upon a finding of guilt on two or more counts, the sentence is good if any of the counts would have justified the sentence. One sentence on more than one count

**102.**—(1) Judgment shall not be given in favour of an appellant based on any alleged defect in the substance or form of an information, certificate or process or any variance between the information, certificate or process and the evidence adduced at trial unless it is shown that objection was taken at the trial and that, in the case of a variance, an adjournment of the trial was refused notwithstanding that the variance had misled the appellant. Appeal based on defect in information or process

(2) Where an appeal is based on a defect in a conviction or an order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect. Idem

**103.** Where a county court exercises any of the powers conferred by sections 94 to 102, it may make any order, in addition, that justice requires. Additional orders

**104.**—(1) Where a county court orders a new trial, it shall be held before a provincial offences court presided over by a justice other than the justice who tried the defendant in the first instance. New trial

(2) Where a county court orders a new trial, it may make such order for the release or detention of the appellant pending such trial as may be made by a justice under subsection 2 of section 128 and the order may be enforced in the same manner as if it had been made by a justice under that subsection. Order for release

**105.**—(1) Where, because of the condition of the record of the trial in the trial court or for any other reason, the county court, upon application of the appellant or respondent, is of the opinion that the interests of justice would be better served by hearing and determining the appeal by holding a new trial in the county court, the county court may order that the appeal shall be heard by way of a new trial in the county court in accordance with the rules, and for this purpose this Act applies, with necessary modifications, in the same manner as to a proceeding in a provincial offences court. Trial *de novo*

(2) The county court may, for the purpose of hearing and determining an appeal under subsection 1, permit the evidence of any witness taken before the trial court to be read if that evidence has been authenticated and if, Evidence

(*a*) the appellant and respondent consent;

(*b*) the county court is satisfied that the attendance of the witness cannot reasonably be obtained; or

(*c*) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the county court.

Dismissal or abandonment

**106.** The county court may, upon proof that notice of an appeal has been given and that,

(*a*) the appellant has failed to comply with any order made under section 89 or 90 or with the conditions of any recognizance entered into under either of those sections; or

(*b*) the appeal has not been proceeded with or has been abandoned,

order that the appeal be dismissed.

Costs

**107.**—(1) Where an appeal is heard and determined or is abandoned or is dismissed for want of prosecution, the county court may make any order with respect to costs that it considers just and reasonable.

Payment

(2) Where the county court orders the appellant or respondent to pay costs, the order shall direct that the costs be paid to the clerk of the court, to be paid by him to the person entitled to them, and shall fix the period within which the costs shall be paid.

Enforcement

(3) Costs ordered to be paid under this section by a person other than a prosecutor acting on behalf of the Crown shall be deemed to be a fine for the purpose of enforcing its payment.

Appeal to Court of Appeal

**108.** A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the county or district court to the Court of Appeal, with leave of a justice of appeal, upon any question of law alone or as to sentence in accordance with the rules made under section 117.

**109.** A defendant who appeals shall, if he is in custody, remain in custody, but a judge of the county court may order his release upon any of the conditions set out in subsection 2 of section 128. Custody pending appeal

**110.** Where an application for leave to appeal is made, the Registrar of the Court of Appeal shall notify the clerk of the county court appealed from of the application and, upon receipt of the notification, the clerk of the county court shall transmit to the Registrar all the material forming the record including any other relevant material requested by a justice of appeal. Transfer of record

**111.** Sections 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104, clause *b* of section 106 and section 107 apply, with necessary modifications, to appeals to the Court of Appeal under section 108. Application of ss. 92, 94-104, 106 (*b*), 107

These provisions are derived from the procedure recently enacted for summary conviction appeals under the Criminal Code. It was felt that the line between the serious provincial offences and the minor criminal offences is not so great as to require a different appeal procedure for the latter. In this instance, the benefits accruing from uniformity are felt to greatly exceed any disadvantages.

The only principal difference from the Code is the abolition of the stated case appeal. The derivation of the sections is as follows: s. 87 [new]; s.88 [s.748 C.C.]; s. 89 [s. 752 C.C.]; s. 90 [s. 752.1 C.C.]; s. 91 [s. 752.3 C.C.]; s. 92 [s. 753(1) C.C.]; s. 93 [s. 754(1) C.C.]; s. 94 [s. 610 C.C.]; s. 95 [s. 615 C.C.]; s. 96 [s. 615 (3) C.C.]; s. 97 (1, 2, 3) [s. 613 (1, 2, 3) C.C.]; s. 97 (4, 5) [s. 760 (1, 3) C.C.]; s. 98 [s. 613(4) C.C.]; s. 99 [s. 613(5)]; s. 100 [s. 614 C.C.]; s. 101 [s. 596 C.C.]; s. 102 [s. 755(7) C.C.]; s. 103 [s. 613(8) C.C.]; s. 104 [s. 755 (2, 3) C.C.]; s. 105 [s. 755(4,5)]; s. 106 [s. 757 C.C.]; s. 107(1) [s. 758 C.C.]; s. 107(2) [s. 759(1) C.C.]; s. 107(3) [new]; s. 108(1) [s. 771 C.C.]; s. 109 [s. 752 C.C.]; s. 110 [s. 609 C.C.]; s. 111 [new].

APPEALS UNDER PARTS I AND II

**112.**—(1) A defendant or the prosecutor or the Attorney General by way of intervention is entitled to appeal an acquittal, conviction or sentence in a proceeding commenced by certificate under Part I or II and the appeal shall be to the provincial court (criminal division) of the county or district in which the adjudication was made. Appeal

(2) A notice of appeal shall be in the prescribed form and shall state the reasons why the appeal is taken and shall be filed with the clerk of the provincial court (criminal division) within fifteen days after the making of the decision appealed from, in accordance with the rules. Application for appeal

Notice of hearing

(3) The clerk shall, as soon as is practicable, give a notice to the defendant and prosecutor of the time and place of the hearing of the appeal.

Payment of fine before appeal

(4) An appeal by a defendant shall not be heard if the defendant has not paid any fine imposed by the decision appealed from and due, except by leave of a judge.

Conduct of appeal

**113.**—(1) Upon an appeal, the court shall give the parties an opportunity to be heard for the purpose of determining the issues and may, where the circumstances warrant it, make such inquiries as are necessary to ensure that the issues are fully and effectively defined.

Review or new trial

(2) An appeal may be conducted by means of a review or by means of a new trial in the provincial court (criminal division) as directed by the court.

Evidence

(3) In determining a review or whether to direct a new trial, the court may,

(*a*) hear or rehear the recorded evidence or any part thereof and may require any party to provide a transcript of the evidence, or any part thereof, or to produce any further exhibit;

(*b*) receive the evidence of any witness whether or not the witness gave evidence at the trial;

(*c*) require the justice presiding at the trial to report in writing on any matter specified in the request; or

(*d*) receive and act upon statements of agreed facts or admissions.

Consequences as factor on review

(4) In conducting a review, the court shall have regard to all the consequences of conviction in addition to the penalty imposed by the sentence.

Dismissal on abandonment

**114.** Where an appeal has not been proceeded with or abandoned, the court may order that the appeal be dismissed.

Powers of court on appeal

**115.** Upon an appeal, the court may affirm, reverse or modify the decision appealed from.

Appeal to Court of Appeal

**116.** An appeal lies from the judgment of the provincial court (criminal division) to the Court of Appeal, with leave of a justice of appeal, upon any question of law alone in accordance with the rules made under section 117.

These provisions are discussed at pages 12-14.

RULES FOR APPEALS

**117.** The Lieutenant Governor in Council may make rules of court not inconsistent with this or any other Act for the conduct of and governing practices and procedures on appeals in the county and district courts and the Court of Appeal under this Act, and respecting any matter arising from or incidental to such appeals. Rules of court for appeals

This is self-explanatory.

REVIEW

**118.**—(1) Upon an application by way of originating notice, the High Court may by order grant any relief in respect of matters arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of mandamus, prohibition or *certiorari*. Application for relief in nature of mandamus, prohibition, *certiorari*

(2) Notice of an application under this section shall be served on, Notice of application

(*a*) the person whose act or omission gives rise to the application;

(*b*) any person who is a party to a proceeding that gives rise to the application; and

(*c*) the Attorney General.

(3) An appeal lies to the Court of Appeal from an order made under this section. Appeal

**119.**—(1) A notice under section 118 in respect of an application for relief in the nature of *certiorari* shall be given at least seven days and not more than ten days before the date fixed for the hearing of the application and the notice shall be served within thirty days after the occurrence of the act sought to be quashed. Notice re *certiorari*

(2) Where a notice referred to in subsection 1 is served on the person making the decision, order or warrant or holding the proceeding giving rise to the application, such person shall forthwith file in the High Court for use on the application, all material concerning the subject-matter of the application. Filing material

(3) No application shall be made to quash a conviction, order or ruling from which an appeal is provided by this Act, whether subject to leave or otherwise. Where appeal available

(4) On an application for relief in the nature of *certiorari*, the High Court shall not grant relief unless the court finds that a substantial wrong or miscarriage of justice has occurred, and the court may amend or validate any decision already made, with effect from such time and on such terms as the court considers proper. Substantial wrong

Order for immunity from civil liability

(5) Where an application is made to quash a decision, order, warrant or proceeding made or held by a justice on the ground that he exceeded his jurisdiction, the High Court may, in quashing the decision, order, warrant or proceeding, order that no civil proceeding shall be taken against the justice or against any officer who acted under the decision, order or warrant or in the proceeding or under any warrant issued to enforce it.

Application for *habeas corpus*

**120.**—(1) Upon an application by way of originating notice, the High Court may by order grant any relief in respect of a matter arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of *habeas corpus*.

Procedure on application for relief in nature of *habeas corpus*

(2) Notice of an application under subsection 1 for relief in the nature of *habeas corpus* shall be served upon the person having custody of the person in respect of whom the application is made and upon the Attorney General and upon the hearing of the application the presence before the High Court of the person in respect of whom the application was made may be dispensed with by consent, in which event the High Court may proceed to dispose of the matter forthwith as the justice of the case requires.

Application of R.S.O. 1970, c. 197

(3) Subject to subsections 1 and 2, *The Habeas Corpus Act* applies to applications under this section, but an application for relief in the nature of *certiorari* may be brought in aid of an application under this section.

1971, c. 48 and R.S.O. 1970, c. 228, ss. 69, 70 do not apply

(4) *The Judicial Review Procedure Act, 1971* and sections 69 and 70 of *The Judicature Act* do not apply to matters in respect of which an application may be made under section 118 for relief in the nature of *certiorari*.

These provisions clear up the judicially-noted confusion in the availability of extraordinary remedies in provincial offence proceedings. In addition, by combining certain of the provisions of Part XXIII of the Criminal Code with those of The Judicial Review Procedure Act, 1971, these provisions provide a clear and sensible approach to extraordinary remedies.

The core provisions permit the extraordinary remedies to be brought in a simplified, non-technical manner. The availability of a remedy in the nature of certiorari to quash a decision is restricted to matters from which there is no appeal, this keeping most challenges to decisions in the appellate review stream. As well, where certiorari is brought because an appeal is not available, it is felt that the no substantial wrong test of appellate review ought to apply to review by way of certiorari.

The Habeas Corpus Act is not affected; the provisions here merely permit a party who wishes to use them to bring the application in a simpler, more expeditious manner. In addition, the more easily brought certiorari remedy of this Act may be joined with habeas corpus in lieu of the more procedurally-complex certiorari available under The Habeas Corpus Act.

## PART VII

### ARREST, BAIL AND SEARCH WARRANTS

*Arrest*

Officer in charge

**121.** In this Part, "officer in charge" means the member of the police force who is in charge of the lock-up or other place to which a person is taken after his arrest.

This modifies the definition found in s. 448(1) of the Criminal Code.

Execution of warrant

**122.**—(1) A warrant for the arrest of a person shall be executed by a police officer by arresting the person against whom the warrant is directed wherever he is found in Ontario.

Idem

(2) A police officer may arrest without warrant a person for whose arrest he has reasonable and probable grounds to believe that a warrant is in force in Ontario.

Subsection 1 is derived from section 456.3(1) of the Criminal Code; subsection 2 from s. 450(1)(c) of the Code. Arrest is only available where the statute creating an offence provides for it.

Citizen's arrest

**123.** Any person, other than a police officer, may arrest without warrant a person who he has reasonable and probable grounds to believe has committed an offence and is escaping from and freshly pursued by a police officer who has lawful authority to arrest that person, and shall forthwith deliver the person arrested to a police officer.

This is derived from section 449(1)(b) and (3) of the Criminal Code.

Use of force

**124.** Every police officer and person acting in aid of a police officer is, if he acts on reasonable and probable grounds, justified in using as much force as is necessary to do what the police officer is required or authorized by law to do.

This is derived from s.25 of the Criminal Code.

Immunity from civil liability

**125.** Where a person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought,

(*a*) against the police officer making the arrest if he believed in good faith and on reasonable and probable grounds that the person arrested was the person named in the warrant or was subject to arrest without warrant under the authority of an Act;

(*b*) against any person called upon to assist the police officer if such person believed that the police officer had the right to effect the arrest; or

(*c*) against any person required to detain the prisoner in custody if such person believes the arrest was lawfully made.

This is derived from section 28 of the Criminal Code.

Production of process

**126.**—(1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

Notice of reason for arrest

(2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest.

This is derived from section 29 of the Criminal Code.

Release after arrest by officer

**127.**—(1) Where a police officer acting under a warrant or other power of arrest, arrests a person, the police officer shall, as soon as is practicable, release the person from custody after serving him with a summons under section 3 or obtaining his undertaking to appear in the prescribed form unless he has reasonable and probable grounds to believe that,

(*a*) it is necessary in the public interest for the person to be detained, having regard to all the circumstances including the need to,

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence; or

(*b*) the person arrested is ordinarily resident outside Ontario.

(2) Where a defendant is not released from custody under subsection 1, the police officer shall deliver him to the officer in charge who shall, where in his opinion the conditions set out in clauses *a* and *b* of subsection 1 do not or no longer exist, release the defendant, Release by officer in charge

(*a*) upon serving him with a summons under section 3;

(*b*) upon his giving an undertaking to appear in the prescribed form; or

(*c*) upon his entering into a recognizance in the prescribed form without sureties conditioned for his appearance in court.

(3) Where the defendant is held for the reason only that he is not ordinarily resident in Ontario, the officer in charge may, in addition to anything required under subsection 2, require the defendant to deposit cash in an amount not to exceed, Cash bail by non-resident

(*a*) where the offence is commenced by certificate under Part I or II, the amount of the set fine for the offence or, if none, $300; or

(*b*) where the offence is commenced by information under Part III, $500.

Subsections 1 and 2 are derived from, and simplify, the provisions of sections 450, 451, 453, of the Code, with subsection 1(b) being new.

Subsection 3 is derived from section 453(l)(k) of the Criminal Code and section 17 of The Summary Convictions Act.

**128.**—(1) Where a defendant is not released from custody under section 127, the officer in charge shall, as soon as is practicable but in any event within twenty-four hours, bring him before a justice and the justice shall, unless a plea of guilty is taken, order that the defendant be released upon giving his undertaking to appear unless the prosecutor having been given an opportunity to do so shows cause why the detention of the defendant is justified to ensure his appearance in court or why an order under subsection 2 is justified for the same purpose. Person in custody to be brought before justice

(2) Subject to subsection 1, the justice may order the release of the defendant, Order for conditional release

(*a*) upon his entering into a recognizance to appear with such conditions as are appropriate to ensure his appearance in court;

(*b*) where the offence is one punishable by imprisonment for twelve months or more, conditional upon his entering into a recognizance before a justice with sureties in such amount and with such conditions, if any, as are appropriate to ensure his appearance in court but without deposit of money or other valuable security; or

(*c*) if the defendant is not ordinarily resident in Ontario, upon his entering into a recognizance before a justice, with or without sureties, in such amount and with such conditions, if any, as are appropriate to ensure his appearance in court, and depositing with the justice such sum of money or other valuable security as the order directs in an amount not exceeding,

(i) where the offence is one commenced by certificate under Part I or II, the amount of the set fine for the offence or if none, $300, or

(ii) where the offence is one commenced by information under Part III, $1,000.

Idem

(3) The justice shall not make an order under clause *b* or *c* of subsection 2 unless the prosecutor shows cause why an order under the immediately preceding clause should not be made.

Order for detention

(4) Where the prosecutor shows cause why the detention of the defendant in custody is justified to ensure his appearance in court, the justice shall order the defendant to be detained in custody until he is dealt with according to law.

Reasons

(5) The justice shall include in the record a statement of his reasons for his decision under subsection 1, 2 or 4.

Evidence at hearing

(6) In a proceeding under subsection 1, the justice may receive and base his decision upon information he considers credible or trustworthy in the circumstances of each case except that the defendant shall not be examined or cross-examined in respect of the offence with which he is charged.

Adjournments

(7) A proceeding under subsection 1 shall not be adjourned for more than three days without the consent of the defendant.

**This is derived from section 457 of the Criminal Code, with modifications to reflect the difference in character of the offences concerned.**

**129.**—(1) Where a defendant is not released from custody under section 127 or 128, he shall be brought before the court for trial forthwith and, in any event, within eight days. Expediting trial of person in custody

(2) The justice presiding upon any appearance of the defendant in court may, upon the application of the defendant or prosecutor, review any order made under section 128 and make such further or other order under section 128 as to him seems appropriate in the circumstances. Further orders

Subsection 1 stresses the view that the gravity of provincial offences is not consistent with pre-trial detention of any substantial length. Once a person is detained, the Crown must bring him to trial within 8 days.

Subsection 2 is derived from section 457.8(2), altering it in favour of a broader power to modify.

**130.** A defendant or the prosecutor may appeal from an order or refusal to make an order under section 128 or 129 and the appeal shall be to the county or district court of the county or district in which the adjudication was made and shall be conducted in accordance with the rules made under section 117. Appeal

This replaces the bail review proceedings of the Criminal Code with an appeal.

**131.**—(1) A person who is released upon deposit of a sum of money under subsection 3 of section 127 or clause *c* of subsection 2 of section 128 may appoint the clerk of the court to act as his agent, in the event that he does not appear to answer to the charge, for the purpose of entering a plea of guilty on his behalf and authorizing the clerk to apply the moneys so deposited toward payment of the fine and costs imposed by the court upon the conviction, and the clerk shall act as agent under this subsection without fee. Appointment of agent for appearance

(2) An officer in charge or justice who takes a recognizance, money or security under section 127 or 128 shall make a return thereof to the court where the defendant is required to appear. Returns to court

(3) The clerk of the court shall, upon the conclusion of proceedings, make a financial return to every person who deposited money or security under a recognizance. Returns to sureties

This is derived from section 18 of The Summary Convictions Act. It is intended to make the laws of Ontario apply effectively to non-residents without unduly inconveniencing them.

Recognizance binds for all appearances

**132.**—(1) Where a person is bound by recognizance to appear before a court, the recognizance binds the person and his sureties in respect of all appearances required in the proceeding at times and places to which the sittings of the court is adjourned.

Recognizance binds independently of other charges

(2) A recognizance is binding in respect of appearances for the offence to which it relates and is not vacated upon the arrest, discharge or conviction of the defendant upon another charge.

Liability joint and several

(3) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance due upon forfeiture.

Subsections 1 and 2 are derived from sections 697 and 699 of the Criminal Code, respectively.

Application by surety to be relieved

**133.**—(1) A surety to a recognizance may, by application in writing to the court, apply to be relieved of his obligation under the recognizance and the court shall thereupon issue a warrant for the arrest of the defendant.

Certificate of arrest

(2) When a police officer arrests the defendant under a warrant issued under subsection 1, he shall certify the arrest by certificate in the prescribed form and deliver the certificate to the court.

Vacating of recognizance

(3) The receipt of the certificate by the court under subsection 2 vacates the recognizance and discharges the sureties.

This is derived from section 700 of the Criminal Code.

Delivery of defendant by surety

**134.** A surety to a recognizance may discharge his obligation under the recognizance by delivering the defendant into the custody of the court at which he is required to appear at any time while it is sitting at or before the trial of the defendant.

This is derived from section 701 of the Criminal Code.

Certificate of default

**135.**—(1) Where a person who is bound by recognizance does not comply with a condition of the recognizance, a justice having knowledge of the facts shall endorse on the recognizance a certificate in the prescribed form setting out,

(*a*) the nature of the default;

(*b*) the reason for the default, if it is known;

(*c*) whether the ends of justice have been defeated or delayed by reason of the default; and

(*d*) the names and addresses of the principal and sureties.

Certificate as evidence

(2) A certificate that has been endorsed on a recognizance under subsection 1 is evidence of the default to which it relates.

Application for forfeiture

(3) The clerk of the court shall transmit the endorsed recognizance to the clerk of the county or district court of the same county or district and, upon its receipt, the endorsed recognizance constitutes an application for the forfeiture of the recognizance.

Notice of hearing

(4) A judge of the county or district court shall fix a time and place for the hearing of the application by the county or district court and the clerk of the county or district court shall, not less than ten days before the time fixed for the hearing, deliver notice to the prosecutor and to each principal and surety named in the recognizance, of the time and place fixed for the hearing and requiring each principal and surety to show cause why the recognizance should not be forfeited.

Order as to forfeiture

(5) The county or district court may, after giving the parties an opportunity to be heard, in its discretion grant or refuse the application and make any order in respect of the forfeiture of the recognizance that the court considers proper.

Collection on forfeiture

(6) Where an order for forfeiture is made under subsection 5,

(*a*) any money or security forfeited shall be paid over by the person who has custody of it to the person who is entitled by law to receive it; and

(*b*) the principal and surety become judgment debtors of the Crown jointly and severally in the amount forfeited under the recognizance and the amount may be collected in the same manner as money owing under a judgment of the county or district court.

**This combines sections 704 and 705 of the Criminal Code, with subsection 6 altering the provisions of s. 705(3).**

Search warrant

**136.**—(1) Where a justice is satisfied by information upon oath that there is reasonable ground to believe that there is in any building, receptacle or place,

(*a*) anything upon or in respect of which an offence has been or is suspected to have been committed; or

(*b*) anything that there is reasonable ground to believe will afford evidence as to the commission of an offence,

he may at any time issue a warrant in the prescribed form under his hand authorizing a police officer or person named therein to search such building, receptacle or place for any such thing, and to seize and carry it before the justice issuing the warrant or another justice in the county or district in which the provincial offences court having jurisdiction in respect of the offence is situated to be dealt with by him according to law.

Expiration

(2) Every search warrant shall name a date upon which it expires, which date shall be not later than fifteen days after its issue.

When to be executed

(3) Every search warrant shall be executed between sunrise and sunset, unless the justice by the warrant authorizes its execution at night.

This is derived from section 16 of The Summary Convictions Act.

Detention of things seized

**137.**—(1) Where any thing is seized and brought before a justice, he shall by order,

(*a*) detain it or direct it to be detained in the care of a person named in the order; or

(*b*) direct it to be returned,

and the justice may make any other provision in the order as, in the opinion of the justice, is appropriate for its preservation.

Time limit for detention

(2) Nothing shall be detained under an order made under subsection 1 for a period of more than three months after the time of seizure unless, before the expiration of that period,

(*a*) upon application, a justice is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and he so orders; or

(*b*) proceedings are instituted in which the thing detained may be required.

(3) Upon the application of the defendant or person having an interest in a thing detained under subsection 1, a justice may make an order for the examination, testing, inspection or reproduction of any thing detained upon such conditions as are reasonably necessary and directed in the order. Application for examination and copying

(4) Upon the application of a person having an interest in a thing detained under subsection 1, and upon notice to the defendant, the person from whom the thing was seized, the person to whom the search warrant was issued and any other person who has an apparent interest in the thing detained, a justice may make an order for the release of any thing detained to the person from whom the thing was seized where it appears that the thing detained is no longer necessary for the purpose of an investigation or proceeding. Application for release

(5) Where an order or refusal to make an order under subsection 3 or 4 is made by a justice of the peace, an appeal lies therefrom in the same manner as an appeal from a conviction in a proceeding commenced by means of a certificate. Appeal where order by justice of the peace

Subsections 1 and 2 are derived from section 446 of the Criminal Code.

Subsection 3 gives the defendant the right to apply, in the interest of disclosure, to inspect, copy or have his own examinations and tests performed on an item which has been seized.

Subsection 4 allows any person having an interest in things which have been detained to secure the release of anything no longer required in an investigation.

Subsection 5 provides a relatively quick and inexpensive appeal from orders and refusals to make orders under subsections 3 and 4.

**138.**—(1) Where under a search warrant a person is about to examine or seize a document that is in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client in respect of the document, the person shall, without examining or making copies of the document, Examination or seizure of documents where privilege claimed

(*a*) seize the document and place it, together with any other document seized in respect of which the same claim is made on behalf of the same client, in a package and seal and identify the package; and

(*b*) place the package in the custody of the clerk of the court in the jurisdiction of which the seizure was made or, with the consent of the person and the client, in the custody of another person.

Application to determine privilege

(2) Where a document has been seized and placed in custody under subsection 1, the client by or on whose behalf the claim of solicitor-client privilege is made may apply to a judge for an order sustaining the privilege and for the return of the document.

Limitation

(3) An application under subsection 2 shall be made not later than thirty days after the date on which the document was placed in custody.

Attorney General a party

(4) The person who seized the document and the Attorney General are parties to an application under subsection 2 and entitled to notice thereof.

Private hearing and scrutiny by judge

(5) An application under subsection 2 shall be heard in private, and, for the purposes of the hearing, the judge may examine the document and, if he does so, shall cause it to be resealed.

Order

(6) The judge may, by order,

(*a*) declare that the solicitor-client privilege exists or does not exist in respect of the document;

(*b*) direct that the document be delivered up to the appropriate person.

Release of document where no application under subs. 2

(7) Where it appears to a judge upon the application of the Attorney General or person who seized the document that no application has been made under subsection 2 within the time limit prescribed by subsection 3, the judge shall order that the document be delivered to the applicant.

**This is derived from section 232 of the Income Tax Act; it reflects the practice generally followed on an ad hoc basis at the present time.**

## PART VIII

### ORDERS ON APPLICATION UNDER STATUTES

Orders under statutes

**139.** Where, by any other Act, proceedings are authorized to be taken before a court or a justice for an order, including an order for the payment of money, this Act applies, with necessary modifications, to the proceeding which shall be commenced in the same manner as in the case of an information charging an offence, and for the purpose,

(*a*) in place of an information, the applicant shall complete a statement in the prescribed form under oath attesting, on reasonable and probable grounds, to the existence of facts that would justify the order sought; and

(*b*) in place of a plea, the defendant shall be asked whether or not he wishes to dispute the making of the order.

This provision applies to all statutes of Ontario which make proceedings other than offence proceedings returnable before a summary convictions court or a justice. It is intended to ensure that these proceedings are brought before the Provincial Offences Court rather than the Provincial Court (Criminal Division) and are conducted in accordance with the provisions of this Act.

## PART IX

### COMMENCEMENT AND TRANSITION

Application

**140.**—(1) This Act, except Parts I and II, applies to offences in respect of which proceedings are commenced after this Act comes into force.

Idem

(2) Part I and Part II apply to offences occurring after that Part comes into force.

Repeals

**141.**—(1) Subject to subsection 2, the following are repealed:

1. *The Summary Convictions Act*, being chapter 450 of the Revised Statutes of Ontario, 1970.
2. *The Summary Convictions Amendment Act, 1971*, being chapter 10.
3. Section 5 of *The Probation Act*, being chapter 364 of the Revised Statutes of Ontario, 1970.

Transition

(2) The enactments repealed by subsection 1 continue in force in respect of offences to which this Act does not apply.

Reference to R.S.O. 1970, c. 450

**142.**—(1) A reference in any Act, regulation or by-law to *The Summary Convictions Act* shall be deemed to be a reference to this Act.

References to summary conviction

(2) A reference in any Act, regulation or by-law to proceeding by summary conviction shall be deemed to refer to the procedures under this Act.

Commencement

**143.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**144.** The short title of this Act is *The Provincial Offences Act, 1978*.

These sections are self-explanatory.

# PART II

## THE PROVINCIAL COURTS AMENDMENT ACT, 1978

### A. Principle Features

### Introduction:

This Act complements the Provincial Offences Act by creating the Provincial Offences Courts and by vesting jurisdiction to try all provincial offences in those Courts. Certain other provisions of this Act will apply generally to all divisions of the provincial courts (criminal, family and provincial offences), but they are discussed here only as they affect provincial offences.

### 1. Creation of the Provincial Offences Court

As discussed above in Part I, a new court is being created for the trial of all provincial offences. Although not in any way analogous to crimes, these offences are now tried in the Criminal Division of the Provincial Court. Under the new provisions, persons charged with provincial offences will not generally find themselves sharing court rooms with persons accused of criminal offences.

It is expected that the court will operate without the addition of new facilities and personnel; in fact, the overall demand for personnel and facilities will likely be reduced by the trial alternatives established in the Provincial Offences Act. The distinction between provincial and criminal offences will generally be brought about by designating certain courtrooms as provincial offences courts, or by convening the provincial offences court on certain days of the week in a courtroom used for criminal matters on other days. However, since in some circumstances it will be necessary to put provincial offence charges on the same court list as criminal or family matters, the Act permits these cases to be heard without any formal re-designation of the court.

The distinction which will be made between the trials of provincial offences and criminal offences is expected to encourage an atmosphere in which the former can be treated with much less rigidity and formality than trials of criminal offences. It is hoped that all persons involved in the trials of provincial offences — judges, justices of the peace, defendants, counsel, agents, and court personnel — will, over time, become infused with this distinction, and reflect it in their approach to provincial offences.

The Provincial Offences Court will ordinarily be presided over by justices of the peace, who will be acting under the general supervision of a judge of the Provincial Court (Criminal Division). These judges will preside in Provincial Offences Court when serious provincial offences are being tried. A number of provisions of the Provincial Offences Act, most notably

the new appeal procedure, are designed to strengthen and enhance the supervision of justices of the peace by the provincial judges. They will also ensure that a defendant can, by appealing, take the matter before a judge.

## 2. Residual Power

In another move away from the rigidities of criminal procedure, the Act vests in the court the power to take necessary procedural steps where the procedural Code contains a gap, or fails to have contemplated a novel fact situation. This is designed to facilitate the effective enforcement of laws and assertion of rights by eliminating the extreme procedural inflexibility which may now impede these goals.

The power is a narrow one; its intent is to give the court the power to take necessary steps in the absence of express statutory procedural provisions, without affecting the present balance of responsibilities within the administration of justice. The power puts elasticity in the procedural Code, thus permitting unforeseen circumstances to be dealt with without legislative amendments. It has also permitted the Provincial Offences Act to be drafted without the great amount of procedural minutiae which has characterized the Criminal Code. The intent is to ensure that once a prosecution is properly before a court, the matter will be fairly determined on its merits; the courts are empowered by this provision to attain that goal.

## 3. Contempt of Court

As the Provincial Offences Court will be a court of record, the judicial officers who preside in it will have certain powers to deal with contempt committed in the face of the court. Recognizing this, and wishing to control and regulate that contempt power, the Act sets out a detailed procedural structure for its exercise.

The basic thrust of these procedural provisions is to ensure that in all but extreme cases, contempt of court will be dealt with by a judge. As well, a cooling-off period is built into the contempt procedure, to ensure that as a general rule the matter is considered dispassionately rather than in the heat of the moment. Only where order and control in the courtroom could not be maintained if the contempt hearing were adjourned may the presiding judicial officer deal with it immediately. When this is done, the quick, informal review process of the Provincial Offences Act will be available to the person whose contempt has been punished.

The Act requires that a person found to be in contempt of court be given an opportunity to indicate to the court why he or she should not be punished. The punishment for contempt is limited to a fine of not more than $1,000, or to imprisonment for not more than 30 days, or to both. Where the person found in contempt is acting as an agent, he or she may additionally be barred from continuing to act as agent in that proceeding.

The Act does not empower the court to deal with contempt committed outside of the court, the power to deal with these contempts being left in the Supreme Court of Ontario. However, if someone who is outside the courtroom is deliberately and without reasonable excuse disturbing or interferring with proceedings then he or she may be charged with an offence. This offence would be prosecuted in the same manner as any other alleged infraction of provincial law.

The offence is intended to properly deal with situations as disparate as a gang of bikers chanting obscenities outside a courtroom window on the one hand, and a jack hammer operator in search of the source of a gas leak on the other. Both must know that their activities are actually disturbing or interferring with the court before they commit an offence, but the jackhammer operator has the right to continue his activities if it is reasonable for him to do so. The provision thus attempts to protect the integrity of the court's procedures without being unduly restrictive.

## B. Explanation of the Act's Provisions

In this section the sections of the Act are reproduced, followed by explanatory notes.

BILL 1978

s.9, amended

**1.**—Section 9 of **The Provincial Courts Act,** being chapter 369 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

Where procedures not provided

(1a) Where jurisdiction is conferred on a judge, justice of the peace or provincial court, in the absence of express provision for procedures therefor in any Act, regulation or rule, the judge, justice of the peace or provincial court shall exercise the jurisdiction in any manner consistent with the due administration of justice.

This section gives the courts a general jurisdictional power to proceed in the absence of express procedural provisions. It is discussed above at page 93.

s.10, amended

**2.**—Section 10 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 46, section 1, is further amended by adding thereto the following subsection:

Chief judge of provincial offences courts

(1a) The chief judge of the provincial courts (criminal division) is chief judge of the provincial offences courts.

This is self-explanatory. The Chief Judge, among other responsibilities, will determine which provincial offences will be tried by provincial judges rather than justices of the peace.

s.16a, enacted

**3.**—The said Act is amended by adding thereto the following section:

Rules committee

16a.-(1) The rules committee of the provincial courts (criminal division) is established and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman.

Quorum

(2) A majority of the members of the rules committee constitutes a quorum.

Rules

(3) The rules committee of the provincial courts (criminal division) is a provincial court (criminal division) for the purpose of making rules of court under the **Criminal Code** (Canada).

R.S.C.1970, c.C-34

These provisions create a rules committee for the Provincial Court (Criminal Division). This same committee will make rules for the Provincial Offences Courts under the power granted to it in section 4 (see the amendment creating section 16f).

**4.**—The said Act is further amended by adding thereto the following Part: Part II-A (ss.16b-16f) enacted

## PART II-A

Provincial offences court

**16b.**-(1) There shall be in every county and district a court of record to be styled,

(**a**) in counties, the "Provincial Offences Court of the County (**or** Judicial District **or** United Counties) of (**naming the county, etc.**)";

(**b**) in districts, the "Provincial Offences Court of the District of (naming the district)",

presided over by a judge or justice of the peace.

Jurisdiction

(2) Each provincial offences court has jurisdiction to hear, determine and dispose of,

1978,c.

(**a**) all matters in which jurisdiction is conferred by **The Provincial Offences Act, 1978;** and

(**b**) any other matter assigned to it by or under any statute.

Sittings

**16c.**-(1) The provincial offences courts may hold sittings at any place in the county or district designated by the chief judge of the provincial offences courts.

Idem

(2) Where a proceeding in which a provincial offences court has jurisdiction is conducted during the course of a sitting of the provincial court (criminal division) or provincial court (family division) in the same county or district, the proceeding shall be deemed to be conducted in the provincial offences court.

Penalty for contempt

**16d.**-(1) Except as otherwise provided by statute, every person who commits contempt in the face of a provincial offences court is upon conviction liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both.

Statement to offender

(2) Before proceedings are taken for contempt under subsection 1, the court shall inform the offender of the conduct complained of and the nature of the contempt and inform him of his right to show cause why he should not be punished.

Show cause

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he should not be punished.

Adjournment for adjudication of contempt

(4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.

Adjudication by a judge

(5) Where a contempt proceeding is adjourned to another day under subsection 4, the contempt proceeding shall be heard and determined by the court presided over by a judge.

Arrest for immediate adjudication of contempt

(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection 4, the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.

Barring of agent in contempt

(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he be barred from acting as agent in the proceeding in addition to any other punishment to which he is liable.

Appeals

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of **The Provincial Offences Act, 1978.**

1978,c.

Enforcement

(9) **The Provincial Offences Act, 1978** applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section.

Penalty for disturbance outside courtroom

16e.-Any person who knowingly disturbs or interferes with the proceedings of a provincial offences court, without reasonable justification, while outside the courtroom is guilty of an offence and upon conviction is liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both.

Rules for provincial offences courts

16f.-Subject to the approval of the Lieutenant Governor in Council, the rules committee of the provincial courts (criminal division) may make rules regulating any matters relating to the practice and procedure of the provincial offences courts including, without limiting the generality of the foregoing,

**(a)** prescribing forms respecting proceedings in the court;

**(b)** prescribing any matter required to be or referred to as prescribed by the rules of the court;

**(c)** prescribing and regulating the proceedings under any Act that confers jurisdiction upon a provincial offences court or a judge or justice of the peace sitting therein.

These provisions create the Provincial Offence Courts, which, like the other provincial courts, will exist in each county and district of the province. Their territorial jurisdiction will be limited to the county or district in which they are situated, but the judicial officers who preside in

them will have province-wide jurisdiction to permit them to preside anywhere in the province. The principle that both judges and justices of the peace may preside is set out in subsection 16b(1); as indicated above the Chief Judge will allocate responsibilities between them.

Subsection 16(b)(2) indicates that all provincial offence proceedings will be taken in the Provincial Offence Court; subsection 16(c)(2) supports this by indicating that if a provincial offence is tried in the criminal or family division of the provincial court, no formalities are required to proceed as a provincial offences court. See the discussion above at pages 92-93.

Subsection 16(d) sets out the contempt procedures; these are discussed above at pages 93-94. Subsection 16(e) creates the offence of deliberate interference with court proceedings; it too is discussed above at pages 93-94.

Subsection 16(e) is noted above under the discussion of section 3.

**5.**—Section 27 of the said Act is amended by adding thereto the following subsection: s.27, amended

(1a) The clerk of a provincial court (criminal division) is the clerk of the provincial offences court of the same county or district. Idem

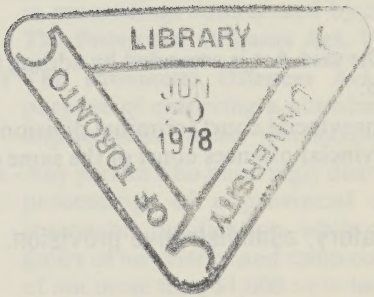
This is a self-explanatory, administrative provision.

**6.**—Where, in any Act, regulation or by-law, a reference is made to a provincial court (criminal division) in connection with a provincial offence, the reference shall be deemed to be to a provincial offences court. References to provincial courts (criminal division)

This provision is intended to ensure that all provincial offences are dealt with by the provincial offences court, without requiring the amendment of existing provincial statutes which refer to the criminal division.

**7.**—This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

**8.**—The short title of this Act is **The Provincial Courts Amendment Act, 1978.** Short title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